

1 **TITLE I—FACILITATING AFFILI-**
2 **ATION AMONG BANKS, SECUR-**
3 **ITIES FIRMS, AND INSUR-**
4 **ANCE COMPANIES**

5 **Subtitle A—Affiliations**

6 **SEC. 101. GLASS-STEAGALL ACT REPEALS.**

7 (a) SECTION 20 REPEALED.—Section 20 of the
8 Banking Act of 1933 (12 U.S.C. 377) (commonly referred
9 to as the “Glass-Steagall Act”) is repealed.

10 (b) SECTION 32 REPEALED.—Section 32 of the
11 Banking Act of 1933 (12 U.S.C. 78) is repealed.

12 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**
13 **HOLDING COMPANIES THAT ARE NOT FINAN-**
14 **CIAL HOLDING COMPANIES.**

15 (a) IN GENERAL.—Section 4(c)(8) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is
17 amended to read as follows:

18 “(8) shares of any company the activities of
19 which had been determined by the Board by regula-
20 tion or order under this paragraph as of the day be-
21 fore the date of the enactment of the Gramm-Leach-
22 Bliley Act, to be so closely related to banking as to
23 be a proper incident thereto (subject to such terms
24 and conditions contained in such regulation or order,
25 unless modified by the Board);”.

1 (b) CONFORMING CHANGES TO OTHER STATUTES.—

2 (1) AMENDMENT TO THE BANK HOLDING COM-
3 PANY ACT AMENDMENTS OF 1970.—Section 105 of
4 the Bank Holding Company Act Amendments of
5 1970 (12 U.S.C. 1850) is amended by striking “, to
6 engage directly or indirectly in a nonbanking activity
7 pursuant to section 4 of such Act,”.

8 (2) AMENDMENT TO THE BANK SERVICE COM-
9 PANY ACT.—Section 4(f) of the Bank Service Com-
10 pany Act (12 U.S.C. 1864(f)) is amended by insert-
11 ing before the period at the end the following: “as
12 of the day before the date of the enactment of the
13 Gramm-Leach-Bliley Act”.

14 **SEC. 103. FINANCIAL ACTIVITIES.**

15 (a) IN GENERAL.—Section 4 of the Bank Holding
16 Company Act of 1956 (12 U.S.C. 1843) is amended by
17 adding at the end the following new subsections:

18 “(k) ENGAGING IN ACTIVITIES THAT ARE FINAN-
19 CIAL IN NATURE.—

20 “(1) IN GENERAL.—Notwithstanding subsection
21 (a), a financial holding company may engage in any
22 activity, and may acquire and retain the shares of
23 any company engaged in any activity, that the
24 Board, in accordance with paragraph (2), determines
25 (by regulation or order)—

1 “(A) to be financial in nature or incidental
2 to such financial activity; or

3 “(B) is complementary to a financial activ-
4 ity and does not pose a substantial risk to the
5 safety or soundness of depository institutions or
6 the financial system generally.

7 “(2) COORDINATION BETWEEN THE BOARD
8 AND THE SECRETARY OF THE TREASURY.—

9 “(A) PROPOSALS RAISED BEFORE THE
10 BOARD.—

11 “(i) CONSULTATION.—The Board
12 shall notify the Secretary of the Treasury
13 of, and consult with the Secretary of the
14 Treasury concerning, any request, pro-
15 posal, or application under this subsection
16 for a determination of whether an activity
17 is financial in nature or incidental to a fi-
18 nancial activity.

19 “(ii) TREASURY VIEW.—The Board
20 shall not determine that any activity is fi-
21 nancial in nature or incidental to a finan-
22 cial activity under this subsection if the
23 Secretary of the Treasury notifies the
24 Board in writing, not later than 30 days
25 after the date of receipt of the notice de-

1 scribed in clause (i) (or such longer period
2 as the Board determines to be appropriate
3 under the circumstances) that the Sec-
4 retary of the Treasury believes that the ac-
5 tivity is not financial in nature or inci-
6 dental to a financial activity or is not oth-
7 erwise permissible under this section.

8 “(B) PROPOSALS RAISED BY THE TREAS-
9 URY.—

10 “(i) TREASURY RECOMMENDATION.—
11 The Secretary of the Treasury may, at any
12 time, recommend in writing that the Board
13 find an activity to be financial in nature or
14 incidental to a financial activity.

15 “(ii) TIME PERIOD FOR BOARD AC-
16 TION.—Not later than 30 days after the
17 date of receipt of a written recommenda-
18 tion from the Secretary of the Treasury
19 under clause (i) (or such longer period as
20 the Secretary of the Treasury and the
21 Board determine to be appropriate under
22 the circumstances), the Board shall deter-
23 mine whether to initiate a public rule-
24 making proposing that the recommended
25 activity be found to be financial in nature

1 or incidental to a financial activity under
2 this subsection, and shall notify the Sec-
3 retary of the Treasury in writing of the de-
4 termination of the Board and, if the Board
5 determines not to seek public comment on
6 the proposal, the reasons for that deter-
7 mination.

8 “(3) FACTORS TO BE CONSIDERED.—In deter-
9 mining whether an activity is financial in nature or
10 incidental to a financial activity, the Board shall
11 take into account—

12 “(A) the purposes of this Act and the
13 Gramm-Leach-Bliley Act;

14 “(B) changes or reasonably expected
15 changes in the marketplace in which financial
16 holding companies compete;

17 “(C) changes or reasonably expected
18 changes in the technology for delivering finan-
19 cial services; and

20 “(D) whether such activity is necessary or
21 appropriate to allow a financial holding com-
22 pany and the affiliates of a financial holding
23 company to—

1 “(i) compete effectively with any com-
2 pany seeking to provide financial services
3 in the United States;

4 “(ii) efficiently deliver information
5 and services that are financial in nature
6 through the use of technological means, in-
7 cluding any application necessary to pro-
8 tect the security or efficacy of systems for
9 the transmission of data or financial trans-
10 actions; and

11 “(iii) offer customers any available or
12 emerging technological means for using fi-
13 nancial services or for the document imag-
14 ing of data.

15 “(4) ACTIVITIES THAT ARE FINANCIAL IN NA-
16 TURE.—For purposes of this subsection, the fol-
17 lowing activities shall be considered to be financial
18 in nature:

19 “(A) Lending, exchanging, transferring, in-
20 vesting for others, or safeguarding money or se-
21 curities.

22 “(B) Insuring, guaranteeing, or indem-
23 nifying against loss, harm, damage, illness, dis-
24 ability, or death, or providing and issuing annu-

1 ities, and acting as principal, agent, or broker
2 for purposes of the foregoing, in any State.

3 “(C) Providing financial, investment, or
4 economic advisory services, including advising
5 an investment company (as defined in section 3
6 of the Investment Company Act of 1940).

7 “(D) Issuing or selling instruments rep-
8 resenting interests in pools of assets permissible
9 for a bank to hold directly.

10 “(E) Underwriting, dealing in, or making
11 a market in securities.

12 “(F) Engaging in any activity that the
13 Board has determined, by order or regulation
14 that is in effect on the date of the enactment
15 of the Gramm-Leach-Bliley Act, to be so closely
16 related to banking or managing or controlling
17 banks as to be a proper incident thereto (sub-
18 ject to the same terms and conditions contained
19 in such order or regulation, unless modified by
20 the Board).

21 “(G) Engaging, in the United States, in
22 any activity that—

23 “(i) a bank holding company may en-
24 gage in outside of the United States; and

1 “(ii) the Board has determined, under
2 regulations prescribed or interpretations
3 issued pursuant to subsection (c)(13) (as
4 in effect on the day before the date of the
5 enactment of the Gramm-Leach-Bliley Act)
6 to be usual in connection with the trans-
7 action of banking or other financial oper-
8 ations abroad.

9 “(H) Directly or indirectly acquiring or
10 controlling, whether as principal, on behalf of 1
11 or more entities (including entities, other than
12 a depository institution or subsidiary of a de-
13 pository institution, that the bank holding com-
14 pany controls), or otherwise, shares, assets, or
15 ownership interests (including debt or equity se-
16 curities, partnership interests, trust certificates,
17 or other instruments representing ownership) of
18 a company or other entity, whether or not con-
19 stituting control of such company or entity, en-
20 gaged in any activity not authorized pursuant
21 to this section if—

22 “(i) the shares, assets, or ownership
23 interests are not acquired or held by a de-
24 pository institution or subsidiary of a de-
25 pository institution;

1 “(ii) such shares, assets, or ownership
2 interests are acquired and held by—

3 (I) a securities affiliate or an af-
4 filiate thereof; or

5 (II) an affiliate of an insurance
6 company described in subparagraph
7 (I)(ii) that provides investment advice
8 to an insurance company and is reg-
9 istered pursuant to the Investment
10 Advisers Act of 1940, or an affiliate
11 of such investment adviser;

12 as part of a bona fide underwriting or mer-
13 chant or investment banking activity, in-
14 cluding investment activities engaged in for
15 the purpose of appreciation and ultimate
16 resale or disposition of the investment;

17 “(iii) such shares, assets, or owner-
18 ship interests are held for a period of time
19 to enable the sale or disposition thereof on
20 a reasonable basis consistent with the fi-
21 nancial viability of the activities described
22 in clause (ii); and

23 “(iv) during the period such shares,
24 assets, or ownership interests are held, the
25 bank holding company does not routinely

1 manage or operate such company or entity
2 except as may be necessary or required to
3 obtain a reasonable return on investment
4 upon resale or disposition.

5 “(I) Directly or indirectly acquiring or con-
6 trolling, whether as principal, on behalf of 1 or
7 more entities (including entities, other than a
8 depository institution or subsidiary of a deposi-
9 tory institution, that the bank holding company
10 controls) or otherwise, shares, assets, or owner-
11 ship interests (including debt or equity securi-
12 ties, partnership interests, trust certificates or
13 other instruments representing ownership) of a
14 company or other entity, whether or not consti-
15 tuting control of such company or entity, en-
16 gaged in any activity not authorized pursuant
17 to this section if—

18 “(i) the shares, assets, or ownership
19 interests are not acquired or held by a de-
20 pository institution or a subsidiary of a de-
21 pository institution;

22 “(ii) such shares, assets, or ownership
23 interests are acquired and held by an in-
24 surance company that is predominantly en-
25 gaged in underwriting life, accident and

1 health, or property and casualty insurance
2 (other than credit-related insurance) or
3 providing and issuing annuities;

4 “(iii) such shares, assets, or owner-
5 ship interests represent an investment
6 made in the ordinary course of business of
7 such insurance company in accordance
8 with relevant State law governing such in-
9 vestments; and

10 “(iv) during the period such shares,
11 assets, or ownership interests are held, the
12 bank holding company does not routinely
13 manage or operate such company except as
14 may be necessary or required to obtain a
15 reasonable return on investment.

16 “(5) ACTIONS REQUIRED.—

17 “(A) IN GENERAL.—The Board shall, by
18 regulation or order, define, consistent with the
19 purposes of this Act, the activities described in
20 subparagraph (B) as financial in nature, and
21 the extent to which such activities are financial
22 in nature or incidental to a financial activity.

23 “(B) ACTIVITIES.—The activities described
24 in this subparagraph are as follows:

1 “(i) Lending, exchanging, transfer-
2 ring, investing for others, or safeguarding
3 financial assets other than money or secu-
4 rities.

5 “(ii) Providing any device or other in-
6 strumentality for transferring money or
7 other financial assets.

8 “(iii) Arranging, effecting, or facili-
9 tating financial transactions for the ac-
10 count of third parties.

11 “(6) REQUIRED NOTIFICATION.—

12 “(A) IN GENERAL.—A financial holding
13 company that acquires any company or com-
14 mences any activity pursuant to this subsection
15 shall provide written notice to the Board de-
16 scribing the activity commenced or conducted
17 by the company acquired not later than 30 cal-
18 endar days after commencing the activity or
19 consummating the acquisition, as the case may
20 be.

21 “(B) APPROVAL NOT REQUIRED FOR CER-
22 TAIN FINANCIAL ACTIVITIES.—Except as pro-
23 vided in subsection (j) with regard to the acqui-
24 sition of a savings association, a financial hold-
25 ing company may commence any activity, or ac-

1 quire any company, pursuant to paragraph (4)
2 or any regulation prescribed or order issued
3 under paragraph (5), without prior approval of
4 the Board.

5 “(7) MERCHANT BANKING ACTIVITIES.—

6 “(A) JOINT REGULATIONS.—The Board
7 and the Secretary of the Treasury may issue
8 such regulations implementing paragraph
9 (4)(H), including limitations on transactions be-
10 tween depository institutions and companies
11 controlled pursuant to such paragraph, as the
12 Board and the Secretary jointly deem appro-
13 priate to assure compliance with the purposes
14 and prevent evasions of this Act and the
15 Gramm-Leach-Bliley Act and to protect deposi-
16 tory institutions.

17 “(B) SUNSET OF RESTRICTIONS ON MER-
18 CHANT BANKING ACTIVITIES OF FINANCIAL
19 SUBSIDIARIES.—The restrictions contained in
20 paragraph (4)(H) on the ownership and control
21 of shares, assets, or ownership interests by or
22 on behalf of a subsidiary of a depository institu-
23 tion shall not apply to a financial subsidiary (as
24 defined in section 5136A of the Revised Stat-
25 utes of the United States) of a bank, if the

1 Board and the Secretary of the Treasury jointly
2 authorize financial subsidiaries of banks to en-
3 gage in merchant banking activities pursuant to
4 section 122 of the Gramm-Leach-Bliley Act.

5 “(l) CONDITIONS FOR ENGAGING IN EXPANDED FI-
6 NANCIAL ACTIVITIES.—

7 “(1) IN GENERAL.—Notwithstanding subsection
8 (k), (n), or (o), a bank holding company may not en-
9 gage in any activity, or directly or indirectly acquire
10 or retain shares of any company engaged in any ac-
11 tivity, under subsection (k), (n), or (o), other than
12 activities permissible for any bank holding company
13 under subsection (c)(8), unless—

14 “(A) all of the depository institution sub-
15 sidiaries of the bank holding company are well
16 capitalized;

17 “(B) all of the depository institution sub-
18 sidiaries of the bank holding company are well
19 managed; and

20 “(C) the bank holding company has filed
21 with the Board—

22 “(i) a declaration that the company
23 elects to be a financial holding company to
24 engage in activities or acquire and retain
25 shares of a company that were not permis-

1 sible for a bank holding company to en-
2 gage in or acquire before the enactment of
3 the Gramm-Leach-Bliley Act; and

4 “(ii) a certification that the company
5 meets the requirements of subparagraphs
6 (A) and (B).

7 “(2) CRA REQUIREMENT.—Notwithstanding
8 subsection (k) or (n) of this section, section
9 5136A(a) of the Revised Statutes of the United
10 States, or section 46(a) of the Federal Deposit In-
11 surance Act, the appropriate Federal banking agen-
12 cy shall prohibit a financial holding company or any
13 insured depository institution from—

14 “(A) commencing any new activity under
15 subsection (k) or (n) of this section, section
16 5136A(a) of the Revised Statutes of the United
17 States, or section 46(a) of the Federal Deposit
18 Insurance Act; or

19 “(B) directly or indirectly acquiring control
20 of a company engaged in any activity under
21 subsection (k) or (n) of this section, section
22 5136A(a) of the Revised Statutes of the United
23 States, or section 46(a) of the Federal Deposit
24 Insurance Act (other than an investment made
25 pursuant to subparagraph (H) or (I) of sub-

1 section (k)(4), or section 122 of the Gramm-
2 Leach-Bliley Act, or under section 46(a) of the
3 Federal Deposit Insurance Act by reason of
4 such section 122, by an affiliate already en-
5 gaged in activities under any such provision);
6 if any insured depository institution subsidiary of
7 such financial holding company, or the insured de-
8 pository institution or any of its insured depository
9 institution affiliates, has received in its most recent
10 examination under the Community Reinvestment Act
11 of 1977, a rating of less than ‘satisfactory record of
12 meeting community credit needs’.

13 “(3) FOREIGN BANKS.—For purposes of para-
14 graph (1), the Board shall apply comparable capital
15 and management standards to a foreign bank that
16 operates a branch or agency or owns or controls a
17 commercial lending company in the United States,
18 giving due regard to the principle of national treat-
19 ment and equality of competitive opportunity.

20 “(m) PROVISIONS APPLICABLE TO FINANCIAL HOLD-
21 ING COMPANIES THAT FAIL TO MEET CERTAIN RE-
22 QUIREMENTS.—

23 “(1) IN GENERAL.—If the Board finds that—

24 “(A) a financial holding company is en-
25 gaged, directly or indirectly, in any activity

1 under subsection (k), (n), or (o), other than ac-
2 tivities that are permissible for a bank holding
3 company under subsection (c)(8); and

4 “(B) such financial holding company is not
5 in compliance with the requirements of sub-
6 section (l)(1);

7 the Board shall give notice to the financial holding
8 company to that effect, describing the conditions giv-
9 ing rise to the notice.

10 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
11 QUIRED.—Not later than 45 days after the date of
12 receipt by a financial holding company of a notice
13 given under paragraph (1) (or such additional period
14 as the Board may permit), the financial holding
15 company shall execute an agreement with the Board
16 to comply with the requirements applicable to a fi-
17 nancial holding company under subsection (l)(1).

18 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
19 the conditions described in a notice to a financial
20 holding company under paragraph (1) are corrected,
21 the Board may impose such limitations on the con-
22 duct or activities of that financial holding company
23 or any affiliate of that company as the Board deter-
24 mines to be appropriate under the circumstances
25 and consistent with the purposes of this Act.

1 “(4) FAILURE TO CORRECT.—If the conditions
2 described in a notice to a financial holding company
3 under paragraph (1) are not corrected within 180
4 days after the date of receipt by the financial hold-
5 ing company of a notice under paragraph (1), the
6 Board may require such financial holding company,
7 under such terms and conditions as may be imposed
8 by the Board and subject to such extension of time
9 as may be granted in the discretion of the Board,
10 either—

11 “(A) to divest control of any subsidiary de-
12 pository institution; or

13 “(B) at the election of the financial hold-
14 ing company instead to cease to engage in any
15 activity conducted by such financial holding
16 company or its subsidiaries (other than a depos-
17 itory institution or a subsidiary of a depository
18 institution) that is not an activity that is per-
19 missible for a bank holding company under sub-
20 section (c)(8).

21 “(5) CONSULTATION.—In taking any action
22 under this subsection, the Board shall consult with
23 all relevant Federal and State regulatory agencies
24 and authorities.

1 “(n) AUTHORITY TO RETAIN LIMITED NON-
2 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

3 “(1) IN GENERAL.—Notwithstanding subsection
4 (a), a company that is not a bank holding company
5 or a foreign bank (as defined in section 1(b)(7) of
6 the International Banking Act of 1978) and becomes
7 a financial holding company after the date of the en-
8 actment of the Gramm-Leach-Bliley Act may con-
9 tinue to engage in any activity and retain direct or
10 indirect ownership or control of shares of a company
11 engaged in any activity if—

12 “(A) the holding company lawfully was en-
13 gaged in the activity or held the shares of such
14 company on September 30, 1999;

15 “(B) the holding company is predomi-
16 nantly engaged in financial activities as defined
17 in paragraph (2); and

18 “(C) the company engaged in such activity
19 continues to engage only in the same activities
20 that such company conducted on September 30,
21 1999, and other activities permissible under
22 this Act.

23 “(2) PREDOMINANTLY FINANCIAL.—For pur-
24 poses of this subsection, a company is predominantly
25 engaged in financial activities if the annual gross

1 revenues derived by the holding company and all
2 subsidiaries of the holding company (excluding reve-
3 nues derived from subsidiary depository institu-
4 tions), on a consolidated basis, from engaging in ac-
5 tivities that are financial in nature or are incidental
6 to a financial activity under subsection (k) represent
7 at least 85 percent of the consolidated annual gross
8 revenues of the company.

9 “(3) NO EXPANSION OF GRANDFATHERED COM-
10 Mercial ACTIVITIES THROUGH MERGER OR CON-
11 SOLIDATION.—A financial holding company that en-
12 gages in activities or holds shares pursuant to this
13 subsection, or a subsidiary of such financial holding
14 company, may not acquire, in any merger, consolida-
15 tion, or other type of business combination, assets of
16 any other company that is engaged in any activity
17 that the Board has not determined to be financial in
18 nature or incidental to a financial activity under
19 subsection (k), except this paragraph shall not apply
20 with respect to a company that owns a broadcasting
21 station licensed under title III of the Communica-
22 tions Act of 1934 and the shares of which are under
23 common control with an insurance company since
24 January 1, 1998, unless such company is acquired
25 by, or otherwise becomes an affiliate of, a bank hold-

1 ing company that, at the time such acquisition or af-
2 filiation is consummated, is 1 of the 5 largest do-
3 mestic bank holding companies (as determined on
4 the basis of the consolidated total assets of such
5 companies).

6 “(4) CONTINUING REVENUE LIMITATION ON
7 GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-
8 withstanding any other provision of this subsection,
9 a financial holding company may continue to engage
10 in activities or hold shares in companies pursuant to
11 this subsection only to the extent that the aggregate
12 annual gross revenues derived from all such activi-
13 ties and all such companies does not exceed 15 per-
14 cent of the consolidated annual gross revenues of the
15 financial holding company (excluding revenues de-
16 rived from subsidiary depository institutions).

17 “(5) CROSS MARKETING RESTRICTIONS APPLI-
18 CABLE TO COMMERCIAL ACTIVITIES.—

19 “(A) IN GENERAL.—A depository institu-
20 tion controlled by a financial holding company
21 shall not—

22 “(i) offer or market, directly or
23 through any arrangement, any product or
24 service of a company whose activities are
25 conducted or whose shares are owned or

1 controlled by the financial holding com-
2 pany pursuant to this subsection or sub-
3 paragraph (H) or (I) of subsection (k)(4);
4 or

5 “(ii) permit any of its products or
6 services to be offered or marketed, directly
7 or through any arrangement, by or
8 through any company described in clause
9 (i).

10 “(B) RULE OF CONSTRUCTION.—Subpara-
11 graph (A) shall not be construed as prohibiting
12 an arrangement between a depository institu-
13 tion and a company owned or controlled pursu-
14 ant to subsection (k)(4)(I) for the marketing of
15 products or services through statement inserts
16 or Internet websites if—

17 “(i) such arrangement does not violate
18 section 106 of the Bank Holding Company
19 Act Amendments of 1970; and

20 “(ii) the Board determines that the
21 arrangement is in the public interest, does
22 not undermine the separation of banking
23 and commerce, and is consistent with the
24 safety and soundness of depository institu-
25 tions.

1 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
2 FILIATES.—A depository institution controlled by a
3 financial holding company may not engage in a cov-
4 ered transaction (as defined in section 23A(b)(7) of
5 the Federal Reserve Act) with any affiliate con-
6 trolled by the company pursuant to this subsection.

7 “(7) SUNSET OF GRANDFATHER.—A financial
8 holding company engaged in any activity, or retain-
9 ing direct or indirect ownership or control of shares
10 of a company, pursuant to this subsection, shall ter-
11 minate such activity and divest ownership or control
12 of the shares of such company before the end of the
13 10-year period beginning on the date of the enact-
14 ment of the Gramm-Leach-Bliley Act. The Board
15 may, upon application by a financial holding com-
16 pany, extend such 10-year period by a period not to
17 exceed an additional 5 years if such extension would
18 not be detrimental to the public interest.

19 “(o) REGULATION OF CERTAIN FINANCIAL HOLDING
20 COMPANIES.—Notwithstanding subsection (a), a company
21 that is not a bank holding company or a foreign bank (as
22 defined in section 1(b)(7) of the International Banking
23 Act of 1978) and becomes a financial holding company
24 after the date of enactment of the Gramm-Leach-Bliley
25 Act, may continue to engage in, or directly or indirectly

1 own or control shares of a company engaged in, activities
2 related to the trading, sale, or investment in commodities
3 and underlying physical properties that were not permis-
4 sible for bank holding companies to conduct in the United
5 States as of September 30, 1997, if—

6 “(1) the holding company, or any subsidiary of
7 the holding company, lawfully was engaged, directly
8 or indirectly, in any of such activities as of Sep-
9 tember 30, 1997, in the United States;

10 “(2) the attributed aggregate consolidated as-
11 sets of the company held by the holding company
12 pursuant to this subsection, and not otherwise per-
13 mitted to be held by a financial holding company,
14 are equal to not more than 5 percent of the total
15 consolidated assets of the bank holding company, ex-
16 cept that the Board may increase that percentage by
17 such amounts and under such circumstances as the
18 Board considers appropriate, consistent with the
19 purposes of this Act; and

20 “(3) the holding company does not permit—

21 “(A) any company, the shares of which it
22 owns or controls pursuant to this subsection, to
23 offer or market any product or service of an af-
24 filiated depository institution; or

1 “(B) any affiliated depository institution to
2 offer or market any product or service of any
3 company, the shares of which are owned or con-
4 trolled by such holding company pursuant to
5 this subsection.”.

6 (b) COMMUNITY REINVESTMENT REQUIREMENT.—
7 Section 804 of the Community Reinvestment Act of 1977
8 (12 U.S.C. 2903) is amended by adding at the end the
9 following new subsection:

10 “(c) FINANCIAL HOLDING COMPANY REQUIRE-
11 MENT.—

12 “(1) IN GENERAL.—An election by a bank hold-
13 ing company to become a financial holding company
14 under section 4 of the Bank Holding Company Act
15 of 1956 shall not be effective if—

16 “(A) the Board finds that, as of the date
17 the declaration of such election and the certifi-
18 cation is filed by such holding company under
19 section 4(l)(1)(C) of the Bank Holding Com-
20 pany Act of 1956, not all of the subsidiary in-
21 sured depository institutions of the bank hold-
22 ing company had achieved a rating of ‘satisfac-
23 tory record of meeting community credit needs’,
24 or better, at the most recent examination of
25 each such institution; and

1 “(B) the Board notifies the company of
2 such finding before the end of the 30-day pe-
3 riod beginning on such date.

4 “(2) LIMITED EXCLUSIONS FOR NEWLY AC-
5 QUIRED INSURED DEPOSITORY INSTITUTIONS.—Any
6 insured depository institution acquired by a bank
7 holding company during the 12-month period pre-
8 ceding the date of the submission to the Board of
9 the declaration and certification under section
10 4(l)(1)(C) of the Bank Holding Company Act of
11 1956 may be excluded for purposes of paragraph (1)
12 during the 12-month period beginning on the date of
13 such acquisition if—

14 “(A) the bank holding company has sub-
15 mitted an affirmative plan to the appropriate
16 Federal financial supervisory agency to take
17 such action as may be necessary in order for
18 such institution to achieve a rating of ‘satisfac-
19 tory record of meeting community credit needs’,
20 or better, at the next examination of the insti-
21 tution; and

22 “(B) the plan has been accepted by such
23 agency.

24 “(3) DEFINITIONS.—For purposes of this sub-
25 section, the following definitions shall apply:

1 “(A) BANK HOLDING COMPANY; FINANCIAL
2 HOLDING COMPANY.—The terms ‘bank holding
3 company’ and ‘financial holding company’ have
4 the meanings given those terms in section 2 of
5 the Bank Holding Company Act of 1956.

6 “(B) BOARD.—The term ‘Board’ means
7 the Board of Governors of the Federal Reserve
8 System.

9 “(C) INSURED DEPOSITORY INSTITU-
10 TION.—The term ‘insured depository institu-
11 tion’ has the meaning given the term in section
12 3(c) of the Federal Deposit Insurance Act.”.

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) DEFINITIONS.—Section 2 of the Bank
15 Holding Company Act of 1956 (12 U.S.C. 1841) is
16 amended—

17 (A) in subsection (n), by inserting “‘depos-
18 itory institution’,” after “the terms”; and

19 (B) by adding at the end the following new
20 subsections:

21 “(p) FINANCIAL HOLDING COMPANY.—For purposes
22 of this Act, the term ‘financial holding company’ means
23 a bank holding company that meets the requirements of
24 section 4(l)(1).

1 “(q) INSURANCE COMPANY.—For purposes of sec-
2 tions 4 and 5, the term ‘insurance company’ includes any
3 person engaged in the business of insurance to the extent
4 of such activities.”.

5 (2) NOTICE PROCEDURES.—Section 4(j) of the
6 Bank Holding Company Act of 1956 (12 U.S.C.
7 1843(j)) is amended—

8 (A) in each of subparagraphs (A) and (E)
9 of paragraph (1), by inserting “or in any com-
10plementary activity under subsection (k)(1)(B)”
11after “subsection (c)(8) or (a)(2)”; and

12 (B) in paragraph (3)—

13 (i) by inserting “, other than any
14complementary activity under subsection
15(k)(1)(B),” after “to engage in any activ-
16ity”; and

17 (ii) by inserting “or a company en-
18gaged in any complementary activity under
19subsection (k)(1)(B)” after “insured de-
20pository institution”.

21 (d) REPORT.—

22 (1) IN GENERAL.—By the end of the 4-year pe-
23riod beginning on the date of the enactment of this
24Act, the Board of Governors of the Federal Reserve
25System and the Secretary of the Treasury shall sub-

1 mit a joint report to the Congress containing a sum-
2 mary of new activities, including grandfathered com-
3 mercial activities, in which any financial holding
4 company is engaged pursuant to subsection (k)(1) or
5 (n) of section 4 of the Bank Holding Company Act
6 of 1956 (as added by subsection (a)).

7 (2) OTHER CONTENTS.—The report submitted
8 to the Congress pursuant to paragraph (1) shall also
9 contain the following:

10 (A) A discussion of actions by the Board
11 of Governors of the Federal Reserve System
12 and the Secretary of the Treasury, whether by
13 regulation, order, interpretation, or guideline or
14 by approval or disapproval of an application,
15 with regard to activities of financial holding
16 companies that are incidental to activities that
17 are financial in nature or complementary to
18 such financial activities.

19 (B) An analysis and discussion of the risks
20 posed by commercial activities of financial hold-
21 ing companies to the safety and soundness of
22 affiliate depository institutions.

23 (C) An analysis and discussion of the ef-
24 fect of mergers and acquisitions under section
25 4(k) of the Bank Holding Company Act of

1 1956 on market concentration in the financial
2 services industry.

3 **SEC. 104. OPERATION OF STATE LAW.**

4 (a) STATE REGULATION OF THE BUSINESS OF IN-
5 SURANCE.—The Act entitled “An Act to express the intent
6 of Congress with reference to the regulation of the busi-
7 ness of insurance” and approved March 9, 1945 (15
8 U.S.C. 1011 et seq.) (commonly referred to as the
9 “McCarran-Ferguson Act”) remains the law of the United
10 States.

11 (b) MANDATORY INSURANCE LICENSING REQUIRE-
12 MENTS.—No person shall engage in the business of insur-
13 ance in a State as principal or agent unless such person
14 is licensed as required by the appropriate insurance regu-
15 lator of such State in accordance with the relevant State
16 insurance law, subject to subsections (c), (d), and (e).

17 (c) AFFILIATIONS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), no State may, by statute, regulation,
20 order, interpretation, or other action, prevent or re-
21 strict a depository institution, or an affiliate thereof,
22 from being affiliated directly or indirectly or associ-
23 ated with any person, as authorized or permitted by
24 this Act or any other provision of Federal law.

1 (2) INSURANCE.—With respect to affiliations
2 between depository institutions, or any affiliate
3 thereof, and any insurer, paragraph (1) does not
4 prohibit—

5 (A) any State from—

6 (i) collecting, reviewing, and taking
7 actions (including approval and dis-
8 approval) on applications and other docu-
9 ments or reports concerning any proposed
10 acquisition of, or a change or continuation
11 of control of, an insurer domiciled in that
12 State; and

13 (ii) exercising authority granted under
14 applicable State law to collect information
15 concerning any proposed acquisition of, or
16 a change or continuation of control of, an
17 insurer engaged in the business of insur-
18 ance in, and regulated as an insurer by,
19 such State;

20 during the 60-day period preceding the effective
21 date of the acquisition or change or continu-
22 ation of control, so long as the collecting, re-
23 viewing, taking actions, or exercising authority
24 by the State does not have the effect of dis-
25 criminating, intentionally or unintentionally,

1 against a depository institution or an affiliate
2 thereof, or against any other person based upon
3 an association of such person with a depository
4 institution;

5 (B) any State from requiring any person
6 that is acquiring control of an insurer domiciled
7 in that State to maintain or restore the capital
8 requirements of that insurer to the level re-
9 quired under the capital regulations of general
10 applicability in that State to avoid the require-
11 ment of preparing and filing with the insurance
12 regulatory authority of that State a plan to in-
13 crease the capital of the insurer, except that
14 any determination by the State insurance regu-
15 latory authority with respect to such require-
16 ment shall be made not later than 60 days after
17 the date of notification under subparagraph
18 (A); or

19 (C) any State from restricting a change in
20 the ownership of stock in an insurer, or a com-
21 pany formed for the purpose of controlling such
22 insurer, after the conversion of the insurer from
23 mutual to stock form so long as such restriction
24 does not have the effect of discriminating, in-
25 tentionally or unintentionally, against a deposi-

1 tory institution or an affiliate thereof, or
2 against any other person based upon an asso-
3 ciation of such person with a depository institu-
4 tion.

5 (d) ACTIVITIES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (3), and except with respect to insurance
8 sales, solicitation, and cross marketing activities,
9 which shall be governed by paragraph (2), no State
10 may, by statute, regulation, order, interpretation, or
11 other action, prevent or restrict a depository institu-
12 tion or an affiliate thereof from engaging directly or
13 indirectly, either by itself or in conjunction with an
14 affiliate, or any other person, in any activity author-
15 ized or permitted under this Act and the amend-
16 ments made by this Act.

17 (2) INSURANCE SALES.—

18 (A) IN GENERAL.—In accordance with the
19 legal standards for preemption set forth in the
20 decision of the Supreme Court of the United
21 States in *Barnett Bank of Marion County N.A.*
22 *v. Nelson*, 517 U.S. 25 (1996), no State may,
23 by statute, regulation, order, interpretation, or
24 other action, prevent or significantly interfere
25 with the ability of a depository institution, or

1 an affiliate thereof, to engage, directly or indi-
2 rectly, either by itself or in conjunction with an
3 affiliate or any other person, in any insurance
4 sales, solicitation, or cross-marketing activity.

5 (B) CERTAIN STATE LAWS PRESERVED.—
6 Notwithstanding subparagraph (A), a State
7 may impose any of the following restrictions, or
8 restrictions that are substantially the same as
9 but no more burdensome or restrictive than
10 those in each of the following clauses:

11 (i) Restrictions prohibiting the rejec-
12 tion of an insurance policy by a depository
13 institution or an affiliate of a depository
14 institution, solely because the policy has
15 been issued or underwritten by any person
16 who is not associated with such depository
17 institution or affiliate when the insurance
18 is required in connection with a loan or ex-
19 tension of credit.

20 (ii) Restrictions prohibiting a require-
21 ment for any debtor, insurer, or insurance
22 agent or broker to pay a separate charge
23 in connection with the handling of insur-
24 ance that is required in connection with a
25 loan or other extension of credit or the

1 provision of another traditional banking
2 product by an depository institution, or
3 any affiliate of a depository institution, un-
4 less such charge would be required when
5 the depository institution or affiliate is the
6 licensed insurance agent or broker pro-
7 viding the insurance.

8 (iii) Restrictions prohibiting the use of
9 any advertisement or other insurance pro-
10 motional material by a depository institu-
11 tion or any affiliate of a depository institu-
12 tion that would cause a reasonable person
13 to believe mistakenly that—

14 (I) the Federal Government or a
15 State is responsible for the insurance
16 sales activities of, or stands behind
17 the credit of, the institution or affil-
18 iate; or

19 (II) a State, or the Federal Gov-
20 ernment guarantees any returns on
21 insurance products, or is a source of
22 payment on any insurance obligation
23 of or sold by the institution or affil-
24 iate;

1 (iv) Restrictions prohibiting the pay-
2 ment or receipt of any commission or bro-
3 kerage fee or other valuable consideration
4 for services as an insurance agent or
5 broker to or by any person, unless such
6 person holds a valid State license regard-
7 ing the applicable class of insurance at the
8 time at which the services are performed,
9 except that, in this clause, the term “serv-
10 ices as an insurance agent or broker” does
11 not include a referral by an unlicensed per-
12 son of a customer or potential customer to
13 a licensed insurance agent or broker that
14 does not include a discussion of specific in-
15 surance policy terms and conditions.

16 (v) Restrictions prohibiting any com-
17 pensation paid to or received by any indi-
18 vidual who is not licensed to sell insurance,
19 for the referral of a customer that seeks to
20 purchase, or seeks an opinion or advice on,
21 any insurance product to a person that
22 sells or provides opinions or advice on such
23 product, based on the purchase of insur-
24 ance by the customer.

1 (vi) Restrictions prohibiting the re-
2 lease of the insurance information of a cus-
3 tomer (defined as information concerning
4 the premiums, terms, and conditions of in-
5 surance coverage, including expiration
6 dates and rates, and insurance claims of a
7 customer contained in the records of the
8 depository institution or an affiliate there-
9 of) to any person other than an officer, di-
10 rector, employee, agent, or affiliate of a de-
11 pository institution, for the purpose of so-
12 liciting or selling insurance, without the ex-
13 press consent of the customer, other than
14 a provision that prohibits—

15 (I) a transfer of insurance infor-
16 mation to an unaffiliated insurer in
17 connection with transferring insurance
18 in force on existing insureds of the de-
19 pository institution or an affiliate
20 thereof, or in connection with a merg-
21 er with or acquisition of an unaffili-
22 ated insurer; or

23 (II) the release of information as
24 otherwise authorized by State or Fed-
25 eral law.

1 (vii) Restrictions prohibiting the use
2 of health information obtained from the in-
3 surance records of a customer for any pur-
4 pose, other than for its activities as a li-
5 censed agent or broker, without the ex-
6 press consent of the customer.

7 (viii) Restrictions prohibiting the ex-
8 tension of credit or any product or service
9 that is equivalent to an extension of credit,
10 lease or sale of property of any kind, or
11 furnishing of any services or fixing or vary-
12 ing the consideration for any of the fore-
13 going, on the condition or requirement that
14 the customer obtain insurance from a de-
15 pository institution or an affiliate of a de-
16 pository institution, or a particular insurer,
17 agent, or broker, other than a prohibition
18 that would prevent any such depository in-
19 stitution or affiliate—

20 (I) from engaging in any activity
21 described in this clause that would not
22 violate section 106 of the Bank Hold-
23 ing Company Act Amendments of
24 1970, as interpreted by the Board of

1 Governors of the Federal Reserve Sys-
2 tem; or

3 (II) from informing a customer
4 or prospective customer that insur-
5 ance is required in order to obtain a
6 loan or credit, that loan or credit ap-
7 proval is contingent upon the procure-
8 ment by the customer of acceptable
9 insurance, or that insurance is avail-
10 able from the depository institution or
11 an affiliate of the depository institu-
12 tion.

13 (ix) Restrictions requiring, when an
14 application by a consumer for a loan or
15 other extension of credit from a depository
16 institution is pending, and insurance is of-
17 fered or sold to the consumer or is re-
18 quired in connection with the loan or ex-
19 tension of credit by the depository institu-
20 tion or any affiliate thereof, that a written
21 disclosure be provided to the consumer or
22 prospective customer indicating that the
23 customer's choice of an insurance provider
24 will not affect the credit decision or credit
25 terms in any way, except that the deposi-

1 tory institution may impose reasonable re-
2 quirements concerning the creditworthiness
3 of the insurer and scope of coverage cho-
4 sen.

5 (x) Restrictions requiring clear and
6 conspicuous disclosure, in writing, where
7 practicable, to the customer prior to the
8 sale of any insurance policy that such
9 policy—

10 (I) is not a deposit;

11 (II) is not insured by the Federal
12 Deposit Insurance Corporation;

13 (III) is not guaranteed by any
14 depository institution or, if appro-
15 priate, an affiliate of any such institu-
16 tion or any person soliciting the pur-
17 chase of or selling insurance on the
18 premises thereof; and

19 (IV) where appropriate, involves
20 investment risk, including potential
21 loss of principal.

22 (xi) Restrictions requiring that, when
23 a customer obtains insurance (other than
24 credit insurance or flood insurance) and
25 credit from a depository institution, or any

1 affiliate of such institution, or any person
2 soliciting the purchase of or selling insur-
3 ance on the premises thereof, the credit
4 and insurance transactions be completed
5 through separate documents.

6 (xii) Restrictions prohibiting, when a
7 customer obtains insurance (other than
8 credit insurance or flood insurance) and
9 credit from a depository institution or an
10 affiliate of such institution, or any person
11 soliciting the purchase of or selling insur-
12 ance on the premises thereof, inclusion of
13 the expense of insurance premiums in the
14 primary credit transaction without the ex-
15 press written consent of the customer.

16 (xiii) Restrictions requiring mainte-
17 nance of separate and distinct books and
18 records relating to insurance transactions,
19 including all files relating to and reflecting
20 consumer complaints, and requiring that
21 such insurance books and records be made
22 available to the appropriate State insur-
23 ance regulator for inspection upon reason-
24 able notice.

25 (C) LIMITATIONS.—

1 (i) OCC DEFERENCE.—Section 304(e)
2 does not apply with respect to any State
3 statute, regulation, order, interpretation,
4 or other action regarding insurance sales,
5 solicitation, or cross marketing activities
6 described in subparagraph (A) that was
7 issued, adopted, or enacted before Sep-
8 tember 3, 1998, and that is not described
9 in subparagraph (B).

10 (ii) NONDISCRIMINATION.—Subsection
11 (e) does not apply with respect to any
12 State statute, regulation, order, interpreta-
13 tion, or other action regarding insurance
14 sales, solicitation, or cross marketing ac-
15 tivities described in subparagraph (A) that
16 was issued, adopted, or enacted before
17 September 3, 1998, and that is not de-
18 scribed in subparagraph (B).

19 (iii) CONSTRUCTION.—Nothing in this
20 paragraph shall be construed—

21 (I) to limit the applicability of
22 the decision of the Supreme Court in
23 Barnett Bank of Marion County N.A.
24 v. Nelson, 517 U.S. 25 (1996) with
25 respect to any State statute, regula-

1 tion, order, interpretation, or other
2 action that is not referred to or de-
3 scribed in subparagraph (B); or

4 (II) to create any inference with
5 respect to any State statute, regula-
6 tion, order, interpretation, or other
7 action that is not described in this
8 paragraph.

9 (3) INSURANCE ACTIVITIES OTHER THAN
10 SALES.—State statutes, regulations, interpretations,
11 orders, and other actions shall not be preempted
12 under paragraph (1) to the extent that they—

13 (A) relate to, or are issued, adopted, or en-
14 acted for the purpose of regulating the business
15 of insurance in accordance with the Act entitled
16 “An Act to express the intent of Congress with
17 reference to the regulation of the business of in-
18 surance” and approved March 9, 1945 (15
19 U.S.C. 1011 et seq.) (commonly referred to as
20 the “McCarran-Ferguson Act”);

21 (B) apply only to persons that are not de-
22 pository institutions, but that are directly en-
23 gaged in the business of insurance (except that
24 they may apply to depository institutions en-
25 gaged in providing savings bank life insurance

1 as principal to the extent of regulating such in-
2 surance);

3 (C) do not relate to or directly or indirectly
4 regulate insurance sales, solicitations, or cross
5 marketing activities; and

6 (D) are not prohibited under subsection
7 (e).

8 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-
9 ANCE.—No State statute, regulation, order, interpre-
10 tation, or other action shall be preempted under
11 paragraph (1) to the extent that—

12 (A) it does not relate to, and is not issued
13 and adopted, or enacted for the purpose of reg-
14 ulating, directly or indirectly, insurance sales,
15 solicitations, or cross marketing activities cov-
16 ered under paragraph (2);

17 (B) it does not relate to, and is not issued
18 and adopted, or enacted for the purpose of reg-
19 ulating, directly or indirectly, the business of in-
20 surance activities other than sales, solicitations,
21 or cross marketing activities, covered under
22 paragraph (3);

23 (C) it does not relate to securities inves-
24 tigations or enforcement actions referred to in
25 subsection (f); and

1 (D) it—

2 (i) does not distinguish by its terms
3 between depository institutions, and affili-
4 ates thereof, engaged in the activity at
5 issue and other persons engaged in the
6 same activity in a manner that is in any
7 way adverse with respect to the conduct of
8 the activity by any such depository institu-
9 tion or affiliate engaged in the activity at
10 issue;

11 (ii) as interpreted or applied, does not
12 have, and will not have, an impact on de-
13 pository institutions, or affiliates thereof,
14 engaged in the activity at issue, or any
15 person who has an association with any
16 such depository institution or affiliate, that
17 is substantially more adverse than its im-
18 pact on other persons engaged in the same
19 activity that are not depository institutions
20 or affiliates thereof, or persons who do not
21 have an association with any such deposi-
22 tory institution or affiliate;

23 (iii) does not effectively prevent a de-
24 pository institution or affiliate thereof from
25 engaging in activities authorized or per-

1 mitted by this Act or any other provision
2 of Federal law; and

3 (iv) does not conflict with the intent
4 of this Act generally to permit affiliations
5 that are authorized or permitted by Fed-
6 eral law.

7 (e) NONDISCRIMINATION.—Except as provided in any
8 restrictions described in subsection (d)(2)(B), no State
9 may, by statute, regulation, order, interpretation, or other
10 action, regulate the insurance activities authorized or per-
11 mitted under this Act or any other provision of Federal
12 law of a depository institution, or affiliate thereof, to the
13 extent that such statute, regulation, order, interpretation,
14 or other action—

15 (1) distinguishes by its terms between deposi-
16 tory institutions, or affiliates thereof, and other per-
17 sons engaged in such activities, in a manner that is
18 in any way adverse to any such depository institu-
19 tion, or affiliate thereof;

20 (2) as interpreted or applied, has or will have
21 an impact on depository institutions, or affiliates
22 thereof, that is substantially more adverse than its
23 impact on other persons providing the same products
24 or services or engaged in the same activities that are

1 not depository institutions, or affiliates thereof, or
2 persons or entities affiliated therewith;

3 (3) effectively prevents a depository institution,
4 or affiliate thereof, from engaging in insurance ac-
5 tivities authorized or permitted by this Act or any
6 other provision of Federal law; or

7 (4) conflicts with the intent of this Act gen-
8 erally to permit affiliations that are authorized or
9 permitted by Federal law between depository institu-
10 tions, or affiliates thereof, and persons engaged in
11 the business of insurance.

12 (f) LIMITATION.—Subsections (c) and (d) shall not
13 be construed to affect—

14 (1) the jurisdiction of the securities commission
15 (or any agency or office performing like functions)
16 of any State, under the laws of such State—

17 (A) to investigate and bring enforcement
18 actions, consistent with section 18(c) of the Se-
19 curities Act of 1933, with respect to fraud or
20 deceit or unlawful conduct by any person, in
21 connection with securities or securities trans-
22 actions; or

23 (B) to require the registration of securities
24 or the licensure or registration of brokers, deal-
25 ers, or investment advisers (consistent with sec-

1 tion 203A of the Investment Advisers Act of
2 1940), or the associated persons of a broker,
3 dealer, or investment adviser (consistent with
4 such section 203A); or

5 (2) State laws, regulations, orders, interpreta-
6 tions, or other actions of general applicability relat-
7 ing to the governance of corporations, partnerships,
8 limited liability companies, or other business associa-
9 tions incorporated or formed under the laws of that
10 State or domiciled in that State, or the applicability
11 of the antitrust laws of any State or any State law
12 that is similar to the antitrust laws if such laws, reg-
13 ulations, orders, interpretations, or other actions are
14 not inconsistent with the purposes of this Act to au-
15 thorize or permit certain affiliations and to remove
16 barriers to such affiliations.

17 (g) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 (1) AFFILIATE.—The term “affiliate” means
20 any company that controls, is controlled by, or is
21 under common control with another company.

22 (2) ANTITRUST LAWS.—The term “antitrust
23 laws” has the meaning given the term in subsection
24 (a) of the first section of the Clayton Act, and in-
25 cludes section 5 of the Federal Trade Commission

1 Act (to the extent that such section 5 relates to un-
2 fair methods of competition).

3 (3) DEPOSITORY INSTITUTION.—The term “de-
4 pository institution”—

5 (A) has the meaning given the term in sec-
6 tion 3 of the Federal Deposit Insurance Act;
7 and

8 (B) includes any foreign bank that main-
9 tains a branch, agency, or commercial lending
10 company in the United States.

11 (4) INSURER.—The term “insurer” means any
12 person engaged in the business of insurance.

13 (5) STATE.—The term “State” means any
14 State of the United States, the District of Columbia,
15 any territory of the United States, Puerto Rico,
16 Guam, American Samoa, the Trust Territory of the
17 Pacific Islands, the Virgin Islands, and the Northern
18 Mariana Islands.

19 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
20 **IZED.**

21 Section 3(g)(2) of the Bank Holding Company Act
22 of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as
23 follows:

24 “(2) REGULATIONS.—A bank holding company
25 organized as a mutual holding company shall be reg-

1 ulated on terms, and shall be subject to limitations,
2 comparable to those applicable to any other bank
3 holding company.”.

4 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
5 **FICES.**

6 Section 109(e)(4) of the Riegle-Neal Interstate Bank-
7 ing and Branching Efficiency Act of 1994 (12 U.S.C.
8 1835a(e)(4)) is amended by inserting “and any branch of
9 a bank controlled by an out-of-State bank holding com-
10 pany (as defined in section 2(o)(7) of the Bank Holding
11 Company Act of 1956)” before the period.

12 **SEC. 107. CROSS MARKETING RESTRICTION; LIMITED PUR-**
13 **POSE BANK RELIEF; DIVESTITURE.**

14 (a) CROSS MARKETING RESTRICTION.—Section 4(f)
15 of the Bank Holding Company Act of 1956 (12 U.S.C.
16 1843(f)) is amended by striking paragraph (3).

17 (b) DAYLIGHT OVERDRAFTS.—Section 4(f) of the
18 Bank Holding Company Act of 1956 (12 U.S.C. 1843(f))
19 is amended by inserting after paragraph (2) the following
20 new paragraph:

21 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—
22 For purposes of paragraph (2)(C), an overdraft is
23 described in this paragraph if—

24 “(A) such overdraft results from an inad-
25 vertent computer or accounting error that is be-

1 yond the control of both the bank and the affil-
2 iate;

3 “(B) such overdraft—

4 “(i) is permitted or incurred on behalf
5 of an affiliate that is monitored by, reports
6 to, and is recognized as a primary dealer
7 by the Federal Reserve Bank of New York;
8 and

9 “(ii) is fully secured, as required by
10 the Board, by bonds, notes, or other obli-
11 gations that are direct obligations of the
12 United States or on which the principal
13 and interest are fully guaranteed by the
14 United States or by securities and obliga-
15 tions eligible for settlement on the Federal
16 Reserve book entry system; or

17 “(C) such overdraft—

18 “(i) is permitted or incurred by, or on
19 behalf of, an affiliate in connection with an
20 activity that is financial in nature or inci-
21 dental to a financial activity; and

22 “(ii) does not cause the bank to vio-
23 late any provision of section 23A or 23B of
24 the Federal Reserve Act, either directly, in
25 the case of a bank that is a member of the

1 Federal Reserve System, or by virtue of
2 section 18(j) of the Federal Deposit Insur-
3 ance Act, in the case of a bank that is not
4 a member of the Federal Reserve Sys-
5 tem.”.

6 (c) INDUSTRIAL LOAN COMPANIES; AFFILIATE
7 OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding
8 Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is
9 amended by inserting “, or that is otherwise permissible
10 for a bank controlled by a company described in section
11 4(f)(1)” before the period at the end.

12 (d) ACTIVITIES LIMITATIONS.—Section 4(f)(2) of the
13 Bank Holding Company Act of 1956 (12 U.S.C.
14 1843(f)(2)) is amended—

15 (1) by striking “Paragraph (1) shall cease to
16 apply to any company described in such paragraph
17 if—” and inserting “Subject to paragraph (3), a
18 company described in paragraph (1) shall no longer
19 qualify for the exemption provided under that para-
20 graph if—”;

21 (2) in subparagraph (A)—

22 (A) in clause (ii)(IX), by striking “and” at
23 the end;

24 (B) in clause (ii)(X), by inserting “and”
25 after the semicolon;

1 (C) in clause (ii), by inserting after sub-
2 clause (X) the following new subclause:

3 “(XI) assets that are derived
4 from, or incidental to, activities in
5 which institutions described in sub-
6 paragraph (F) or (H) of section
7 2(c)(2) are permitted to engage;” and

8 (D) by striking “or” at the end; and
9 (3) by striking subparagraph (B) and inserting
10 the following:

11 “(B) any bank subsidiary of such
12 company—

13 “(i) accepts demand deposits or de-
14 posits that the depositor may withdraw by
15 check or similar means for payment to
16 third parties; and

17 “(ii) engages in the business of mak-
18 ing commercial loans (except that, for pur-
19 poses of this clause, loans made in the or-
20 dinary course of a credit card operation
21 shall not be treated as commercial loans);
22 or

23 “(C) after the date of the enactment of the
24 Competitive Equality Amendments of 1987, any
25 bank subsidiary of such company permits any

1 overdraft (including any intraday overdraft), or
2 incurs any such overdraft in the account of the
3 bank at a Federal reserve bank, on behalf of an
4 affiliate, other than an overdraft described in
5 paragraph (3).”.

6 (e) DIVESTITURE REQUIREMENT.—Section 4(f)(4) of
7 the Bank Holding Company Act of 1956 (12 U.S.C.
8 1843(f)(4)) is amended to read as follows:

9 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
10 EMPTION.—If any company described in paragraph
11 (1) fails to qualify for the exemption provided under
12 paragraph (1) by operation of paragraph (2), such
13 exemption shall cease to apply to such company and
14 such company shall divest control of each bank it
15 controls before the end of the 180-day period begin-
16 ning on the date on which the company receives no-
17 tice from the Board that the company has failed to
18 continue to qualify for such exemption, unless, be-
19 fore the end of such 180-day period, the company
20 has—

21 “(A) either—

22 “(i) corrected the condition or ceased
23 the activity that caused the company to
24 fail to continue to qualify for the exemp-
25 tion; or

1 “(ii) submitted a plan to the Board
2 for approval to cease the activity or correct
3 the condition in a timely manner (which
4 shall not exceed 1 year); and

5 “(B) implemented procedures that are rea-
6 sonably adapted to avoid the reoccurrence of
7 such condition or activity.”.

8 (f) FOREIGN BANK SUBSIDIARIES OF LIMITED PUR-
9 POSE CREDIT CARD BANKS.—Section 4(f) of the Bank
10 Holding Company Act of 1956 (12 U.S.C. 1843(f)) is
11 amended by adding at the end the following new para-
12 graph:

13 “(14) FOREIGN BANK SUBSIDIARIES OF LIM-
14 ITED PURPOSE CREDIT CARD BANKS.—

15 “(A) IN GENERAL.—An institution de-
16 scribed in section 2(c)(2)(F) may control a for-
17 eign bank if—

18 “(i) the investment of the institution
19 in the foreign bank meets the requirements
20 of section 25 or 25A of the Federal Re-
21 serve Act and the foreign bank qualifies
22 under such sections;

23 “(ii) the foreign bank does not offer
24 any products or services in the United
25 States; and

1 “(iii) the activities of the foreign bank
2 are permissible under otherwise applicable
3 law.

4 “(B) OTHER LIMITATIONS INAPPLI-
5 CABLE.—The limitations contained in any
6 clause of section 2(c)(2)(F) shall not apply to
7 a foreign bank described in subparagraph (A)
8 that is controlled by an institution described in
9 such section.”.

10 **SEC. 108. USE OF SUBORDINATED DEBT TO PROTECT FI-**
11 **NANCIAL SYSTEM AND DEPOSIT FUNDS FROM**
12 **“TOO BIG TO FAIL” INSTITUTIONS.**

13 (a) STUDY REQUIRED.—The Board of Governors of
14 the Federal Reserve System and the Secretary of the
15 Treasury shall conduct a study of—

16 (1) the feasibility and appropriateness of estab-
17 lishing a requirement that, with respect to large in-
18 sured depository institutions and depository institu-
19 tion holding companies the failure of which could
20 have serious adverse effects on economic conditions
21 or financial stability, such institutions and holding
22 companies maintain some portion of their capital in
23 the form of subordinated debt in order to bring mar-
24 ket forces and market discipline to bear on the oper-
25 ation of, and the assessment of the viability of, such

1 institutions and companies and reduce the risk to
2 economic conditions, financial stability, and any de-
3 posit insurance fund;

4 (2) if such requirement is feasible and appro-
5 priate, the appropriate amount or percentage of cap-
6 ital that should be subordinated debt consistent with
7 such purposes; and

8 (3) the manner in which any such requirement
9 could be incorporated into existing capital standards
10 and other issues relating to the transition to such a
11 requirement.

12 (b) REPORT.—Before the end of the 18-month period
13 beginning on the date of the enactment of this Act, the
14 Board of Governors of the Federal Reserve System and
15 the Secretary of the Treasury shall submit a report to the
16 Congress containing the findings and conclusions of the
17 Board and the Secretary in connection with the study re-
18 quired under subsection (a), together with such legislative
19 and administrative proposals as the Board and the Sec-
20 retary may determine to be appropriate.

21 (c) DEFINITIONS.—For purposes of subsection (a),
22 the following definitions shall apply:

23 (1) BANK HOLDING COMPANY.—The term
24 “bank holding company” has the meaning given the

1 term in section 2 of the Bank Holding Company Act
2 of 1956.

3 (2) INSURED DEPOSITORY INSTITUTION.—The
4 term “insured depository institution” has the mean-
5 ing given the term in section 3(e) of the Federal De-
6 posit Insurance Act.

7 (3) SUBORDINATED DEBT.—The term “subor-
8 dinated debt” means unsecured debt that—

9 (A) has an original weighted average ma-
10 turity of not less than 5 years;

11 (B) is subordinated as to payment of prin-
12 cipal and interest to all other indebtedness of
13 the bank, including deposits;

14 (C) is not supported by any form of credit
15 enhancement, including a guarantee or standby
16 letter of credit; and

17 (D) is not held in whole or in part by any
18 affiliate or institution-affiliated party of the in-
19 sured depository institution or bank holding
20 company.

21 **SEC. 109. STUDY OF FINANCIAL MODERNIZATION’S EFFECT**
22 **ON THE ACCESSIBILITY OF SMALL BUSINESS**
23 **AND FARM LOANS.**

24 (a) STUDY.—The Secretary of the Treasury, in con-
25 sultation with the Federal banking agencies (as defined

1 in section 3(z) of the Federal Deposit Insurance Act),
2 shall conduct a study of the extent to which credit is being
3 provided to and for small businesses and farms, as a result
4 of this Act and the amendments made by this Act.

5 (b) REPORT.—Before the end of the 5-year period be-
6 ginning on the date of the enactment of this Act, the Sec-
7 retary, in consultation with the Federal banking agencies,
8 shall submit a report to the Congress on the study con-
9 ducted pursuant to subsection (a) and shall include such
10 recommendations as the Secretary determines to be appro-
11 priate for administrative and legislative action.

12 **Subtitle B—Streamlining Super-**
13 **vision of Bank Holding Compa-**
14 **nies**

15 **SEC. 111. STREAMLINING BANK HOLDING COMPANY SU-**
16 **PERVISION.**

17 Section 5(c) of the Bank Holding Company Act of
18 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

19 “(c) REPORTS AND EXAMINATIONS.—

20 “(1) REPORTS.—

21 “(A) IN GENERAL.—The Board, from time
22 to time, may require a bank holding company
23 and any subsidiary of such company to submit
24 reports under oath to keep the Board informed
25 as to—

1 “(i) its financial condition, systems
2 for monitoring and controlling financial
3 and operating risks, and transactions with
4 depository institution subsidiaries of the
5 bank holding company; and

6 “(ii) compliance by the company or
7 subsidiary with applicable provisions of
8 this Act or any other Federal law that the
9 Board has specific jurisdiction to enforce
10 against such company or subsidiary.

11 “(B) USE OF EXISTING REPORTS.—

12 “(i) IN GENERAL.—For purposes of
13 compliance with this paragraph, the Board
14 shall, to the fullest extent possible,
15 accept—

16 “(I) reports that a bank holding
17 company or any subsidiary of such
18 company has provided or been re-
19 quired to provide to other Federal or
20 State supervisors or to appropriate
21 self-regulatory organizations;

22 “(II) information that is other-
23 wise required to be reported publicly;
24 and

1 “(III) externally audited financial
2 statements.

3 “(ii) AVAILABILITY.—A bank holding
4 company or a subsidiary of such company
5 shall provide to the Board, at the request
6 of the Board, a report referred to in clause
7 (i).

8 “(iii) REPORTS FILED WITH OTHER
9 AGENCIES.—

10 “(I) IN GENERAL.—In the event
11 that the Board requires a report
12 under this subsection from a function-
13 ally regulated subsidiary of a bank
14 holding company of a kind that is not
15 required by another Federal or State
16 regulatory authority or an appropriate
17 self-regulatory organization, the
18 Board shall first request that the ap-
19 propriate regulatory authority or self-
20 regulatory organization obtain such
21 report.

22 “(II) AVAILABILITY FROM OTHER
23 SUBSIDIARY.—If the report is not
24 made available to the Board, and the
25 report is necessary to assess a mate-

1 rial risk to the bank holding company
2 or any of its depository institution
3 subsidiaries or compliance with this
4 Act or any other Federal law that the
5 Board has specific jurisdiction to en-
6 force against such company or sub-
7 sidiary or the systems described in
8 paragraph (2)(A)(ii)(II), the Board
9 may require such functionally regu-
10 lated subsidiary to provide such a re-
11 port to the Board.

12 “(2) EXAMINATIONS.—

13 “(A) EXAMINATION AUTHORITY FOR BANK
14 HOLDING COMPANIES AND SUBSIDIARIES.—
15 Subject to subparagraph (B), the Board may
16 make examinations of each bank holding com-
17 pany and each subsidiary of such holding com-
18 pany in order—

19 “(i) to inform the Board of the nature
20 of the operations and financial condition of
21 the holding company and such subsidiaries;

22 “(ii) to inform the Board of—

23 “(I) the financial and operational
24 risks within the holding company sys-
25 tem that may pose a threat to the

1 safety and soundness of any deposi-
2 tory institution subsidiary of such
3 holding company; and

4 “(II) the systems for monitoring
5 and controlling such risks; and

6 “(iii) to monitor compliance with the
7 provisions of this Act or any other Federal
8 law that the Board has specific jurisdiction
9 to enforce against such company or sub-
10 subsidiary and those governing transactions
11 and relationships between any depository
12 institution subsidiary and its affiliates.

13 “(B) FUNCTIONALLY REGULATED SUB-
14 SIDIARIES.—Notwithstanding subparagraph
15 (A), the Board may make examinations of a
16 functionally regulated subsidiary of a bank
17 holding company only if—

18 “(i) the Board has reasonable cause
19 to believe that such subsidiary is engaged
20 in activities that pose a material risk to an
21 affiliated depository institution;

22 “(ii) the Board reasonably determines,
23 after reviewing relevant reports, that ex-
24 amination of the subsidiary is necessary to
25 adequately inform the Board of the sys-

1 tems described in subparagraph (A)(ii)(II);
2 or

3 “(iii) based on reports and other
4 available information, the Board has rea-
5 sonable cause to believe that a subsidiary
6 is not in compliance with this Act or any
7 other Federal law that the Board has spe-
8 cific jurisdiction to enforce against such
9 subsidiary, including provisions relating to
10 transactions with an affiliated depository
11 institution, and the Board cannot make
12 such determination through examination of
13 the affiliated depository institution or the
14 bank holding company.

15 “(C) RESTRICTED FOCUS OF EXAMINA-
16 TIONS.—The Board shall, to the fullest extent
17 possible, limit the focus and scope of any exam-
18 ination of a bank holding company to—

19 “(i) the bank holding company; and

20 “(ii) any subsidiary of the bank hold-
21 ing company that could have a materially
22 adverse effect on the safety and soundness
23 of any depository institution subsidiary of
24 the holding company due to—

1 “(I) the size, condition, or activi-
2 ties of the subsidiary; or

3 “(II) the nature or size of trans-
4 actions between the subsidiary and
5 any depository institution that is also
6 a subsidiary of the bank holding com-
7 pany.

8 “(D) DEFERENCE TO BANK EXAMINA-
9 TIONS.—The Board shall, to the fullest extent
10 possible, for the purposes of this paragraph, use
11 the reports of examinations of depository insti-
12 tutions made by the appropriate Federal and
13 State depository institution supervisory author-
14 ity.

15 “(E) DEFERENCE TO OTHER EXAMINA-
16 TIONS.—The Board shall, to the fullest extent
17 possible, forego an examination by the Board
18 under this paragraph and instead review the re-
19 ports of examination made of—

20 “(i) any registered broker or dealer by
21 or on behalf of the Securities and Ex-
22 change Commission;

23 “(ii) any registered investment adviser
24 properly registered by or on behalf of ei-

1 ther the Securities and Exchange Commis-
2 sion or any State;

3 “(iii) any licensed insurance company
4 by or on behalf of any State regulatory au-
5 thority responsible for the supervision of
6 insurance companies; and

7 “(iv) any other subsidiary that the
8 Board finds to be comprehensively super-
9 vised by a Federal or State authority.

10 “(3) CAPITAL.—

11 “(A) IN GENERAL.—The Board may not,
12 by regulation, guideline, order, or otherwise,
13 prescribe or impose any capital or capital ade-
14 quacy rules, guidelines, standards, or require-
15 ments on any functionally regulated subsidiary
16 of a bank holding company that—

17 “(i) is not a depository institution;
18 and

19 “(ii) is—

20 “(I) in compliance with the appli-
21 cable capital requirements of its Fed-
22 eral regulatory authority (including
23 the Securities and Exchange Commis-
24 sion) or State insurance authority;

1 “(II) properly registered as an
2 investment adviser under the Invest-
3 ment Advisers Act of 1940, or with
4 any State; or

5 “(III) is licensed as an insurance
6 agent with the appropriate State in-
7 surance authority.

8 “(B) RULE OF CONSTRUCTION.—Subpara-
9 graph (A) shall not be construed as preventing
10 the Board from imposing capital or capital ade-
11 quacy rules, guidelines, standards, or require-
12 ments with respect to—

13 “(i) activities of a registered invest-
14 ment adviser other than with respect to in-
15 vestment advisory activities or activities in-
16 cidental to investment advisory activities;
17 or

18 “(ii) activities of a licensed insurance
19 agent other than insurance agency activi-
20 ties or activities incidental to insurance
21 agency activities.

22 “(C) LIMITATIONS ON INDIRECT AC-
23 TION.—In developing, establishing, or assessing
24 bank holding company capital or capital ade-
25 quacy rules, guidelines, standards, or require-

1 ments for purposes of this paragraph, the
2 Board may not take into account the activities,
3 operations, or investments of an affiliated in-
4 vestment company registered under the Invest-
5 ment Company Act of 1940, unless the invest-
6 ment company is—

7 “(i) a bank holding company; or

8 “(ii) controlled by a bank holding
9 company by reason of ownership by the
10 bank holding company (including through
11 all of its affiliates) of 25 percent or more
12 of the shares of the investment company,
13 and the shares owned by the bank holding
14 company have a market value equal to
15 more than \$1,000,000.

16 “(4) FUNCTIONAL REGULATION OF SECURITIES
17 AND INSURANCE ACTIVITIES.—

18 “(A) SECURITIES ACTIVITIES.—Securities
19 activities conducted in a functionally regulated
20 subsidiary of a depository institution shall be
21 subject to regulation by the Securities and Ex-
22 change Commission, and by relevant State secu-
23 rities authorities, as appropriate, subject to sec-
24 tion 104 of the Gramm-Leach-Bliley Act, to the
25 same extent as if they were conducted in a non-

1 depository institution subsidiary of a bank hold-
2 ing company.

3 “(B) INSURANCE ACTIVITIES.—Subject to
4 section 104 of the Gramm-Leach-Bliley Act, in-
5 surance agency and brokerage activities and ac-
6 tivities as principal conducted in a functionally
7 regulated subsidiary of a depository institution
8 shall be subject to regulation by a State insur-
9 ance authority to the same extent as if they
10 were conducted in a nondepository institution
11 subsidiary of a bank holding company.

12 “(5) DEFINITION.—For purposes of this sub-
13 section, the term ‘functionally regulated subsidiary’
14 means any company—

15 “(A) that is not a bank holding company
16 or a depository institution; and

17 “(B) that is—

18 “(i) a broker or dealer that is reg-
19 istered under the Securities Exchange Act
20 of 1934;

21 “(ii) a registered investment adviser,
22 properly registered by or on behalf of ei-
23 ther the Securities and Exchange Commis-
24 sion or any State, with respect to the in-
25 vestment advisory activities of such invest-

1 ment adviser and activities incidental to
2 such investment advisory activities;

3 “(iii) an investment company that is
4 registered under the Investment Company
5 Act of 1940;

6 “(iv) an insurance company, with re-
7 spect to insurance activities of the insur-
8 ance company and activities incidental to
9 such insurance activities, that is subject to
10 supervision by a State insurance regulator;
11 or

12 “(v) an entity that is subject to regu-
13 lation by the Commodity Futures Trading
14 Commission, with respect to the commod-
15 ities activities of such entity and activities
16 incidental to such commodities activities.”.

17 **SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR**
18 **AND SECURITIES AND EXCHANGE COMMIS-**
19 **SION.**

20 (a) BANK HOLDING COMPANIES.—Section 5 of the
21 Bank Holding Company Act of 1956 (12 U.S.C. 1844)
22 is amended by adding at the end the following new sub-
23 section:

24 “(g) AUTHORITY OF STATE INSURANCE REGULATOR
25 AND THE SECURITIES AND EXCHANGE COMMISSION.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, any regulation, order, or other ac-
3 tion of the Board that requires a bank holding com-
4 pany to provide funds or other assets to a subsidiary
5 depository institution shall not be effective nor en-
6 forceable with respect to an entity described in sub-
7 paragraph (A) if—

8 “(A) such funds or assets are to be pro-
9 vided by—

10 “(i) a bank holding company that is
11 an insurance company, a broker or dealer
12 registered under the Securities Exchange
13 Act of 1934, an investment company reg-
14 istered under the Investment Company Act
15 of 1940, or an investment adviser reg-
16 istered by or on behalf of either the Securi-
17 ties and Exchange Commission or any
18 State; or

19 “(ii) an affiliate of the depository in-
20 stitution that is an insurance company or
21 a broker or dealer registered under the Se-
22 curities Exchange Act of 1934, an invest-
23 ment company registered under the Invest-
24 ment Company Act of 1940, or an invest-
25 ment adviser registered by or on behalf of

1 either the Securities and Exchange Com-
2 mission or any State; and

3 “(B) the State insurance authority for the
4 insurance company or the Securities and Ex-
5 change Commission for the registered broker,
6 dealer, investment adviser (solely with respect
7 to investment advisory activities or activities in-
8 cidental thereto), or investment company, as
9 the case may be, determines in writing sent to
10 the holding company and the Board that the
11 holding company shall not provide such funds
12 or assets because such action would have a ma-
13 terial adverse effect on the financial condition
14 of the insurance company or the broker, dealer,
15 investment company, or investment adviser, as
16 the case may be.

17 “(2) NOTICE TO STATE INSURANCE AUTHORITY
18 OR SEC REQUIRED.—If the Board requires a bank
19 holding company, or an affiliate of a bank holding
20 company, that is an insurance company or a broker,
21 dealer, investment company, or investment adviser
22 described in paragraph (1)(A) to provide funds or
23 assets to a depository institution subsidiary of the
24 holding company pursuant to any regulation, order,
25 or other action of the Board referred to in para-

1 graph (1), the Board shall promptly notify the State
2 insurance authority for the insurance company, the
3 Securities and Exchange Commission, or State secu-
4 rities regulator, as the case may be, of such require-
5 ment.

6 “(3) DIVESTITURE IN LIEU OF OTHER AC-
7 TION.—If the Board receives a notice described in
8 paragraph (1)(B) from a State insurance authority
9 or the Securities and Exchange Commission with re-
10 gard to a bank holding company or affiliate referred
11 to in that paragraph, the Board may order the bank
12 holding company to divest the depository institution
13 not later than 180 days after receiving the notice, or
14 such longer period as the Board determines con-
15 sistent with the safe and sound operation of the de-
16 pository institution.

17 “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
18 ing the period beginning on the date an order to di-
19 vest is issued by the Board under paragraph (3) to
20 a bank holding company and ending on the date the
21 divestiture is completed, the Board may impose any
22 conditions or restrictions on the holding company’s
23 ownership or operation of the depository institution,
24 including restricting or prohibiting transactions be-
25 tween the depository institution and any affiliate of

1 the institution, as are appropriate under the cir-
2 cumstances.

3 “(5) RULE OF CONSTRUCTION.—No provision
4 of this subsection may be construed as limiting or
5 otherwise affecting, except to the extent specifically
6 provided in this subsection, the regulatory authority,
7 including the scope of the authority, of any Federal
8 agency or department with regard to any entity that
9 is within the jurisdiction of such agency or depart-
10 ment.”.

11 (b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—
12 The Federal Deposit Insurance Act (12 U.S.C. 1811 et
13 seq.) is amended by adding at the end the following new
14 section:

15 **“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**
16 **AND SECURITIES AND EXCHANGE COMMIS-**
17 **SION.**

18 “(a) IN GENERAL.—Notwithstanding any other pro-
19 vision of law, the provisions of—

20 “(1) section 5(c) of the Bank Holding Company
21 Act of 1956 that limit the authority of the Board of
22 Governors of the Federal Reserve System to require
23 reports from, to make examinations of, or to impose
24 capital requirements on holding companies and their

1 functionally regulated subsidiaries or that require
2 deference to other regulators;

3 “(2) section 5(g) of the Bank Holding Company
4 Act of 1956 that limit the authority of the Board to
5 require a functionally regulated subsidiary of a hold-
6 ing company to provide capital or other funds or as-
7 sets to a depository institution subsidiary of the
8 holding company and to take certain actions includ-
9 ing requiring divestiture of the depository institu-
10 tion; and

11 “(3) section 10A of the Bank Holding Company
12 Act of 1956 that limit whatever authority the Board
13 might otherwise have to take direct or indirect ac-
14 tion with respect to holding companies and their
15 functionally regulated subsidiaries;

16 shall also limit whatever authority that a Federal banking
17 agency might otherwise have under any statute or regula-
18 tion to require reports, make examinations, impose capital
19 requirements, or take any other direct or indirect action
20 with respect to any functionally regulated affiliate of a de-
21 pository institution, subject to the same standards and re-
22 quirements as are applicable to the Board under those
23 provisions.

24 “(b) CERTAIN EXEMPTION AUTHORIZED.—No provi-
25 sion of this section shall be construed as preventing the

1 Corporation, if the Corporation finds it necessary to deter-
2 mine the condition of a depository institution for insur-
3 ance purposes, from examining an affiliate of any deposi-
4 tory institution, pursuant to section 10(b)(4), as may be
5 necessary to disclose fully the relationship between the de-
6 pository institution and the affiliate, and the effect of such
7 relationship on the depository institution.

8 “(c) DEFINITIONS.—For purposes of this section, the
9 following definitions shall apply:

10 “(1) FUNCTIONALLY REGULATED SUB-
11 SIDIARY.—The term ‘functionally regulated sub-
12 sidiary’ has the meaning given the term in section
13 5(c)(5) of the Bank Holding Company Act of 1956.

14 “(2) FUNCTIONALLY REGULATED AFFILIATE.—
15 The term ‘functionally regulated affiliate’ means,
16 with respect to any depository institution, any affil-
17 iate of such depository institution that is—

18 “(A) not a depository institution holding
19 company; and

20 “(B) a company described in any clause of
21 section 5(c)(5)(B) of the Bank Holding Com-
22 pany Act of 1956.”.

1 **SEC. 113. ROLE OF THE BOARD OF GOVERNORS OF THE**
2 **FEDERAL RESERVE SYSTEM.**

3 The Bank Holding Company Act of 1956 (12 U.S.C.
4 1841 et seq.) is amended by inserting after section 10 the
5 following new section:

6 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
7 **PERVISORY, AND ENFORCEMENT AUTHORITY**
8 **OF THE BOARD.**

9 “(a) LIMITATION ON DIRECT ACTION.—The Board
10 may not prescribe regulations, issue or seek entry of or-
11 ders, impose restraints, restrictions, guidelines, require-
12 ments, safeguards, or standards, or otherwise take any ac-
13 tion under or pursuant to any provision of this Act or sec-
14 tion 8 of the Federal Deposit Insurance Act against or
15 with respect to a functionally regulated subsidiary of a
16 bank holding company unless—

17 “(1) the action is necessary to prevent or re-
18 dress an unsafe or unsound practice or breach of fi-
19 duciary duty by such subsidiary that poses a mate-
20 rial risk to—

21 “(A) the financial safety, soundness, or
22 stability of an affiliated depository institution;
23 or

24 “(B) the domestic or international pay-
25 ment system; and

1 “(2) the Board finds that it is not reasonably
2 possible to protect effectively against the material
3 risk at issue through action directed at or against
4 the affiliated depository institution or against depos-
5 itory institutions generally.

6 “(b) LIMITATION ON INDIRECT ACTION.—The Board
7 may not prescribe regulations, issue or seek entry of or-
8 ders, impose restraints, restrictions, guidelines, require-
9 ments, safeguards, or standards, or otherwise take any ac-
10 tion under or pursuant to any provision of this Act or sec-
11 tion 8 of the Federal Deposit Insurance Act against or
12 with respect to a bank holding company that requires the
13 bank holding company to require a functionally regulated
14 subsidiary of the holding company to engage, or to refrain
15 from engaging, in any conduct or activities unless the
16 Board could take such action directly against or with re-
17 spect to the functionally regulated subsidiary in accord-
18 ance with subsection (a).

19 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
20 withstanding subsection (a) or (b), the Board may take
21 action under this Act or section 8 of the Federal Deposit
22 Insurance Act to enforce compliance by a functionally reg-
23 ulated subsidiary of a bank holding company with any
24 Federal law that the Board has specific jurisdiction to en-
25 force against such subsidiary.

1 “(d) FUNCTIONALLY REGULATED SUBSIDIARY DE-
2 FINED.—For purposes of this section, the term ‘function-
3 ally regulated subsidiary’ has the meaning given the term
4 in section 5(c)(5).”.

5 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

6 (a) COMPTROLLER OF THE CURRENCY.—

7 (1) IN GENERAL.—The Comptroller of the Cur-
8 rency may, by regulation or order, impose restric-
9 tions or requirements on relationships or trans-
10 actions between a national bank and a subsidiary of
11 the national bank that the Comptroller finds are—

12 (A) consistent with the purposes of this
13 Act, title LXII of the Revised Statutes of the
14 United States, and other Federal law applicable
15 to national banks; and

16 (B) appropriate to avoid any significant
17 risk to the safety and soundness of insured de-
18 pository institutions or any Federal deposit in-
19 surance fund or other adverse effects, such as
20 undue concentration of resources, decreased or
21 unfair competition, conflicts of interests, or un-
22 sound banking practices.

23 (2) REVIEW.—The Comptroller of the Currency
24 shall regularly—

1 (A) review all restrictions or requirements
2 established pursuant to paragraph (1) to deter-
3 mine whether there is a continuing need for any
4 such restriction or requirement to carry out the
5 purposes of the Act, including the avoidance of
6 any adverse effect referred to in paragraph
7 (1)(B); and

8 (B) modify or eliminate any such restric-
9 tion or requirement the Comptroller finds is no
10 longer required for such purposes.

11 (b) BOARD OF GOVERNORS OF THE FEDERAL RE-
12 SERVE SYSTEM.—

13 (1) IN GENERAL.—The Board of Governors of
14 the Federal Reserve System may, by regulation or
15 order, impose restrictions or requirements on rela-
16 tionships or transactions—

17 (A) between a depository institution sub-
18 sidiary of a bank holding company and any af-
19 filiate of such depository institution (other than
20 a subsidiary of such institution); or

21 (B) between a State member bank and a
22 subsidiary of such bank;

23 if the Board makes a finding described in paragraph
24 (2) with respect to such restriction or requirement.

1 (2) FINDING.—The Board of Governors of the
2 Federal Reserve System may exercise authority
3 under paragraph (1) if the Board finds that the ex-
4 ercise of such authority is—

5 (A) consistent with the purposes of this
6 Act, the Bank Holding Company Act of 1956,
7 the Federal Reserve Act, and other Federal law
8 applicable to depository institution subsidiaries
9 of bank holding companies or State member
10 banks, as the case may be; and

11 (B) appropriate to prevent an evasion of
12 any provision of law referred to in subpara-
13 graph (A) or to avoid any significant risk to the
14 safety and soundness of depository institutions
15 or any Federal deposit insurance fund or other
16 adverse effects, such as undue concentration of
17 resources, decreased or unfair competition, con-
18 flicts of interests, or unsound banking practices.

19 (3) REVIEW.—The Board of Governors of the
20 Federal Reserve System shall regularly—

21 (A) review all restrictions or requirements
22 established pursuant to paragraph (1) or (4) to
23 determine whether there is a continuing need
24 for any such restriction or requirement to carry
25 out the purposes of the Act, including the

1 avoidance of any adverse effect referred to in
2 paragraph (2)(B) or (4)(B); and

3 (B) modify or eliminate any such restric-
4 tion or requirement the Board finds is no
5 longer required for such purposes.

6 (4) FOREIGN BANKS.—The Board may, by reg-
7 ulation or order, impose restrictions or requirements
8 on relationships or transactions between a branch,
9 agency, or commercial lending company of a foreign
10 bank in the United States and any affiliate in the
11 United States of such foreign bank that the Board
12 finds are—

13 (A) consistent with the purposes of this
14 Act, the Bank Holding Company Act of 1956,
15 the Federal Reserve Act, and other Federal law
16 applicable to foreign banks and their affiliates
17 in the United States; and

18 (B) appropriate to prevent an evasion of
19 any provision of law referred to in subpara-
20 graph (A) or to avoid any significant risk to the
21 safety and soundness of depository institutions
22 or any Federal deposit insurance fund or other
23 adverse effects, such as undue concentration of
24 resources, decreased or unfair competition, con-
25 flicts of interests, or unsound banking practices.

1 (c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

2 (1) IN GENERAL.—The Federal Deposit Insur-
3 ance Corporation may, by regulation or order, im-
4 pose restrictions or requirements on relationships or
5 transactions between a State nonmember bank (as
6 defined in section 3 of the Federal Deposit Insur-
7 ance Act) and a subsidiary of the State nonmember
8 bank that the Corporation finds are—

9 (A) consistent with the purposes of this
10 Act, the Federal Deposit Insurance Act, or
11 other Federal law applicable to State non-
12 member banks; and

13 (B) appropriate to avoid any significant
14 risk to the safety and soundness of depository
15 institutions or any Federal deposit insurance
16 fund or other adverse effects, such as undue
17 concentration of resources, decreased or unfair
18 competition, conflicts of interests, or unsound
19 banking practices.

20 (2) REVIEW.—The Federal Deposit Insurance
21 Corporation shall regularly—

22 (A) review all restrictions or requirements
23 established pursuant to paragraph (1) to deter-
24 mine whether there is a continuing need for any
25 such restriction or requirement to carry out the

1 purposes of the Act, including the avoidance of
2 any adverse effect referred to in paragraph
3 (1)(B); and

4 (B) modify or eliminate any such restric-
5 tion or requirement the Corporation finds is no
6 longer required for such purposes.

7 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

8 (a) EXCLUSIVE COMMISSION AUTHORITY.—Except
9 as provided in subsection (c), a Federal banking agency
10 may not inspect or examine any registered investment
11 company that is not a bank holding company or a savings
12 and loan holding company.

13 (b) EXAMINATION RESULTS AND OTHER INFORMA-
14 TION.—The Commission shall provide to any Federal
15 banking agency, upon request, the results of any examina-
16 tion, reports, records, or other information with respect
17 to any registered investment company to the extent nec-
18 essary for the agency to carry out its statutory responsibil-
19 ities.

20 (c) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
21 ing in this section shall prevent the Corporation, if the
22 Corporation finds it necessary to determine the condition
23 of an insured depository institution for insurance pur-
24 poses, from examining an affiliate of any insured deposi-
25 tory institution, pursuant to its authority under section

1 10(b)(4) of the Federal Deposit Insurance Act, as may
2 be necessary to disclose fully the relationship between the
3 insured depository institution and the affiliate, and the ef-
4 fect of such relationship on the insured depository institu-
5 tion.

6 (d) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 (1) BANK HOLDING COMPANY.—The term
9 “bank holding company” has the meaning given the
10 term in section 2 of the Bank Holding Company Act
11 of 1956.

12 (2) COMMISSION.—The term “Commission”
13 means the Securities and Exchange Commission.

14 (3) CORPORATION.—The term “Corporation”
15 means the Federal Deposit Insurance Corporation.

16 (4) FEDERAL BANKING AGENCY.—The term
17 “Federal banking agency” has the meaning given
18 the term in section 3(z) of the Federal Deposit In-
19 surance Act.

20 (5) INSURED DEPOSITORY INSTITUTION.—The
21 term “insured depository institution” has the mean-
22 ing given the term in section 3(c) of the Federal De-
23 posit Insurance Act.

24 (6) REGISTERED INVESTMENT COMPANY.—The
25 term “registered investment company” means an in-

1 vestment company that is registered with the Com-
2 mission under the Investment Company Act of 1940.

3 (7) SAVINGS AND LOAN HOLDING COMPANY.—

4 The term “savings and loan holding company” has
5 the meaning given the term in section 10(a)(1)(D)
6 of the Home Owners’ Loan Act.

7 **SEC. 116. ELIMINATION OF APPLICATION REQUIREMENT**
8 **FOR FINANCIAL HOLDING COMPANIES.**

9 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-
10 tion 5(a) of the Bank Holding Company Act of 1956 (12
11 U.S.C. 1844(a)) is amended by adding at the end the fol-
12 lowing new sentence: “A declaration filed in accordance
13 with section 4(l)(1)(C) shall satisfy the requirements of
14 this subsection with regard to the registration of a bank
15 holding company but not any requirement to file an appli-
16 cation to acquire a bank pursuant to section 3.”.

17 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of
18 the Bank Holding Company Act of 1956 (12 U.S.C.
19 1844(e)(1)) is amended—

20 (1) by striking “Financial Institutions Super-
21 visory Act of 1966, order” and inserting “Financial
22 Institutions Supervisory Act of 1966, at the election
23 of the bank holding company—

24 “(A) order”; and

1 (2) by striking “shareholders of the bank hold-
2 ing company. Such distribution” and inserting
3 “shareholders of the bank holding company; or
4 “(B) order the bank holding company, after due
5 notice and opportunity for hearing, and after con-
6 sultation with the primary supervisor for the bank,
7 which shall be the Comptroller of the Currency in
8 the case of a national bank, and the Federal Deposit
9 Insurance Corporation and the appropriate State su-
10 pervisor in the case of an insured nonmember bank,
11 to terminate (within 120 days or such longer period
12 as the Board may direct) the ownership or control
13 of any such bank by such company.
14 The distribution referred to in subparagraph (A)”.

15 **SEC. 117. PRESERVING THE INTEGRITY OF FDIC RE-**
16 **SOURCES.**

17 Section 11(a)(4)(B) of the Federal Deposit Insurance
18 Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to
19 benefit any shareholder of” and inserting “to benefit any
20 shareholder or affiliate (other than an insured depository
21 institution that receives assistance in accordance with the
22 provisions of this Act) of”.

1 **SEC. 118. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
2 **BANK HOLDING COMPANY ACT OF 1956.**

3 Section 3(f) of the Bank Holding Company Act of
4 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

5 “(f) [Repealed].”.

6 **SEC. 119. TECHNICAL AMENDMENT.**

7 Section 2(o)(1)(A) of the Bank Holding Company
8 Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by
9 striking “section 38(b)” and inserting “section 38”.

10 **Subtitle C—Subsidiaries of**
11 **National Banks**

12 **SEC. 121. SUBSIDIARIES OF NATIONAL BANKS.**

13 (a) IN GENERAL.—Chapter one of title LXII of the
14 Revised Statutes of the United States (12 U.S.C. 21 et
15 seq.) is amended—

16 (1) by redesignating section 5136A as section
17 5136B; and

18 (2) by inserting after section 5136 (12 U.S.C.
19 24) the following new section:

20 **“SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL**
21 **BANKS.**

22 “(a) AUTHORIZATION TO CONDUCT IN SUBSIDIARIES
23 CERTAIN ACTIVITIES THAT ARE FINANCIAL IN NA-
24 TURE.—

1 “(1) IN GENERAL.—Subject to paragraph (2), a
2 national bank may control a financial subsidiary, or
3 hold an interest in a financial subsidiary.

4 “(2) CONDITIONS AND REQUIREMENTS.—A na-
5 tional bank may control a financial subsidiary, or
6 hold an interest in a financial subsidiary, only if—

7 “(A) the financial subsidiary engages only
8 in—

9 “(i) activities that are financial in na-
10 ture or incidental to a financial activity
11 pursuant to subsection (b); and

12 “(ii) activities that are permitted for
13 national banks to engage in directly (sub-
14 ject to the same terms and conditions that
15 govern the conduct of the activities by a
16 national bank);

17 “(B) the activities engaged in by the finan-
18 cial subsidiary as a principal do not include—

19 “(i) insuring, guaranteeing, or indem-
20 nifying against loss, harm, damage, illness,
21 disability, or death (except to the extent
22 permitted under section 302 or 303(c) of
23 the Gramm-Leach-Bliley Act) or providing
24 or issuing annuities the income of which is

1 subject to tax treatment under section 72
2 of the Internal Revenue Code of 1986;

3 “(ii) real estate development or real
4 estate investment activities, unless other-
5 wise expressly authorized by law; or

6 “(iii) any activity permitted in sub-
7 paragraph (H) or (I) of section 4(k)(4) of
8 the Bank Holding Company Act of 1956,
9 except activities described in section
10 4(k)(4)(H) that may be permitted in ac-
11 cordance with section 122 of the Gramm-
12 Leach-Bliley Act;

13 “(C) the national bank and each depository
14 institution affiliate of the national bank are well
15 capitalized and well managed;

16 “(D) the aggregate consolidated total as-
17 sets of all financial subsidiaries of the national
18 bank do not exceed the lesser of—

19 “(i) 45 percent of the consolidated
20 total assets of the parent bank; or

21 “(ii) \$50,000,000,000;

22 “(E) except as provided in paragraph (4),
23 the national bank meets any applicable rating
24 or other requirement set forth in paragraph (3);
25 and

1 “(F) the national bank has received the
2 approval of the Comptroller of the Currency for
3 the financial subsidiary to engage in such ac-
4 tivities, which approval shall be based solely
5 upon the factors set forth in this section.

6 “(3) RATING OR COMPARABLE REQUIRE-
7 MENT.—

8 “(A) IN GENERAL.—A national bank meets
9 the requirements of this paragraph if—

10 “(i) the bank is 1 of the 50 largest in-
11 sured banks and has not fewer than 1
12 issue of outstanding eligible debt that is
13 currently rated within the 3 highest invest-
14 ment grade rating categories by a nation-
15 ally recognized statistical rating organiza-
16 tion; or

17 “(ii) the bank is 1 of the second 50
18 largest insured banks and meets the cri-
19 teria set forth in clause (i) or such other
20 criteria as the Secretary of the Treasury
21 and the Board of Governors of the Federal
22 Reserve System may jointly establish by
23 regulation and determine to be comparable
24 to and consistent with the purposes of the
25 rating required in clause (i).

1 “(B) CONSOLIDATED TOTAL ASSETS.—For
2 purposes of this paragraph, the size of an in-
3 sured bank shall be determined on the basis of
4 the consolidated total assets of the bank as of
5 the end of each calendar year.

6 “(4) FINANCIAL AGENCY SUBSIDIARY.—The re-
7 quirement in paragraph (2)(E) shall not apply with
8 respect to the ownership or control of a financial
9 subsidiary that engages in activities described in
10 subsection (b)(1) solely as agent and not directly or
11 indirectly as principal.

12 “(5) REGULATIONS REQUIRED.—Before the end
13 of the 270-day period beginning on the date of the
14 enactment of the Gramm-Leach-Bliley Act, the
15 Comptroller of the Currency shall, by regulation,
16 prescribe procedures to implement this section.

17 “(6) INDEXED ASSET LIMIT.—The dollar
18 amount contained in paragraph (2)(D) shall be ad-
19 justed according to an indexing mechanism jointly
20 established by regulation by the Secretary of the
21 Treasury and the Board of Governors of the Federal
22 Reserve System.

23 “(7) COORDINATION WITH SECTION 4(l)(2) OF
24 THE BANK HOLDING COMPANY ACT OF 1956.—Sec-
25 tion 4(l)(2) of the Bank Holding Company Act of

1 1956 applies to a national bank that controls a fi-
2 nancial subsidiary in the manner provided in that
3 section.

4 “(b) ACTIVITIES THAT ARE FINANCIAL IN NA-
5 TURE.—

6 “(1) FINANCIAL ACTIVITIES.—

7 “(A) IN GENERAL.—An activity shall be fi-
8 nancial in nature or incidental to such financial
9 activity only if—

10 “(i) such activity has been defined to
11 be financial in nature or incidental to a fi-
12 nancial activity for bank holding companies
13 pursuant to section 4(k)(4) of the Bank
14 Holding Company Act of 1956; or

15 “(ii) the Secretary of the Treasury de-
16 termines the activity is financial in nature
17 or incidental to a financial activity in ac-
18 cordance with subparagraph (B).

19 “(B) COORDINATION BETWEEN THE
20 BOARD AND THE SECRETARY OF THE TREAS-
21 URY.—

22 “(i) PROPOSALS RAISED BEFORE THE
23 SECRETARY OF THE TREASURY.—

24 “(I) CONSULTATION.—The Sec-
25 retary of the Treasury shall notify the

1 Board of, and consult with the Board
2 concerning, any request, proposal, or
3 application under this section for a
4 determination of whether an activity
5 is financial in nature or incidental to
6 a financial activity.

7 “(II) BOARD VIEW.—The Sec-
8 retary of the Treasury shall not deter-
9 mine that any activity is financial in
10 nature or incidental to a financial ac-
11 tivity under this section if the Board
12 notifies the Secretary in writing, not
13 later than 30 days after the date of
14 receipt of the notice described in sub-
15 clause (I) (or such longer period as
16 the Secretary determines to be appro-
17 priate under the circumstances) that
18 the Board believes that the activity is
19 not financial in nature or incidental to
20 a financial activity or is not otherwise
21 permissible under this section.

22 “(ii) PROPOSALS RAISED BY THE
23 BOARD.—

24 “(I) BOARD RECOMMENDA-
25 TION.—The Board may, at any time,

1 recommend in writing that the Sec-
2 retary of the Treasury find an activity
3 to be financial in nature or incidental
4 to a financial activity for purposes of
5 this section.

6 “(II) TIME PERIOD FOR SECRE-
7 TARIAL ACTION.—Not later than 30
8 days after the date of receipt of a
9 written recommendation from the
10 Board under subclause (I) (or such
11 longer period as the Secretary of the
12 Treasury and the Board determine to
13 be appropriate under the cir-
14 cumstances), the Secretary shall de-
15 termine whether to initiate a public
16 rulemaking proposing that the subject
17 recommended activity be found to be
18 financial in nature or incidental to a
19 financial activity under this section,
20 and shall notify the Board in writing
21 of the determination of the Secretary
22 and, in the event that the Secretary
23 determines not to seek public com-
24 ment on the proposal, the reasons for
25 that determination.

1 “(2) FACTORS TO BE CONSIDERED.—In deter-
2 mining whether an activity is financial in nature or
3 incidental to a financial activity, the Secretary shall
4 take into account—

5 “(A) the purposes of this Act and the
6 Gramm-Leach-Bliley Act;

7 “(B) changes or reasonably expected
8 changes in the marketplace in which banks
9 compete;

10 “(C) changes or reasonably expected
11 changes in the technology for delivering finan-
12 cial services; and

13 “(D) whether such activity is necessary or
14 appropriate to allow a bank and the subsidiaries
15 of a bank to—

16 “(i) compete effectively with any com-
17 pany seeking to provide financial services
18 in the United States;

19 “(ii) efficiently deliver information
20 and services that are financial in nature
21 through the use of technological means, in-
22 cluding any application necessary to pro-
23 tect the security or efficacy of systems for
24 the transmission of data or financial trans-
25 actions; and

1 “(iii) offer customers any available or
2 emerging technological means for using fi-
3 nancial services or for the document imag-
4 ing of data.

5 “(3) AUTHORIZATION OF NEW FINANCIAL AC-
6 TIVITIES.—The Secretary of the Treasury shall, by
7 regulation or order and in accordance with para-
8 graph (1)(B), define, consistent with the purposes of
9 this Act and the Gramm-Leach-Bliley Act, the fol-
10 lowing activities as, and the extent to which such ac-
11 tivities are, financial in nature or incidental to a fi-
12 nancial activity:

13 “(A) Lending, exchanging, transferring, in-
14 vesting for others, or safeguarding financial as-
15 sets other than money or securities.

16 “(B) Providing any device or other instru-
17 mentality for transferring money or other finan-
18 cial assets.

19 “(C) Arranging, effecting, or facilitating fi-
20 nancial transactions for the account of third
21 parties.

22 “(c) CAPITAL DEDUCTION.—

23 “(1) CAPITAL DEDUCTION REQUIRED.—In de-
24 termining compliance with applicable capital
25 standards—

1 “(A) the aggregate amount of the out-
2 standing equity investment, including retained
3 earnings, of a national bank in all financial sub-
4 sidiaries shall be deducted from the assets and
5 tangible equity of the national bank; and

6 “(B) the assets and liabilities of the finan-
7 cial subsidiaries shall not be consolidated with
8 those of the national bank.

9 “(2) FINANCIAL STATEMENT DISCLOSURE OF
10 CAPITAL DEDUCTION.—Any published financial
11 statement of a national bank that controls a finan-
12 cial subsidiary shall, in addition to providing infor-
13 mation prepared in accordance with generally ac-
14 cepted accounting principles, separately present fi-
15 nancial information for the bank in the manner pro-
16 vided in paragraph (1).

17 “(d) SAFEGUARDS FOR THE BANK.—A national bank
18 that establishes or maintains a financial subsidiary shall
19 assure that—

20 “(1) the procedures of the national bank for
21 identifying and managing financial and operational
22 risks within the national bank and the financial sub-
23 sidiary adequately protect the national bank from
24 such risks;

1 “(2) the national bank has, for the protection
2 of the bank, reasonable policies and procedures to
3 preserve the separate corporate identity and limited
4 liability of the national bank and the financial sub-
5 sidiaries of the national bank; and

6 “(3) the national bank is in compliance with
7 this section.

8 “(e) PROVISIONS APPLICABLE TO NATIONAL BANKS
9 THAT FAIL TO CONTINUE TO MEET CERTAIN REQUIRE-
10 MENTS.—

11 “(1) IN GENERAL.—If a national bank or in-
12 sured depository institution affiliate does not con-
13 tinue to meet the requirements of subsection
14 (a)(2)(C) or subsection (d), the Comptroller of the
15 Currency shall promptly give notice to the national
16 bank to that effect describing the conditions giving
17 rise to the notice.

18 “(2) AGREEMENT TO CORRECT CONDITIONS.—
19 Not later than 45 days after the date of receipt by
20 a national bank of a notice given under paragraph
21 (1) (or such additional period as the Comptroller of
22 the Currency may permit), the national bank shall
23 execute an agreement with the Comptroller of the
24 Currency and any relevant insured depository insti-
25 tution affiliate shall execute an agreement with its

1 appropriate Federal banking agency to comply with
2 the requirements of subsection (a)(2)(C) and sub-
3 section (d).

4 “(3) IMPOSITION OF CONDITIONS.—Until the
5 conditions described in a notice under paragraph (1)
6 are corrected—

7 “(A) the Comptroller of the Currency may
8 impose such limitations on the conduct or ac-
9 tivities of the national bank or any subsidiary
10 of the national bank as the Comptroller of the
11 Currency determines to be appropriate under
12 the circumstances and consistent with the pur-
13 poses of this section; and

14 “(B) the appropriate Federal banking
15 agency may impose such limitations on the con-
16 duct or activities of any relevant insured deposi-
17 tory institution affiliate or any subsidiary of the
18 institution as such agency determines to be ap-
19 propriate under the circumstances and con-
20 sistent with the purposes of this section.

21 “(4) FAILURE TO CORRECT.—If the conditions
22 described in a notice to a national bank under para-
23 graph (1) are not corrected within 180 days after
24 the date of receipt by the national bank of the no-
25 tice, the Comptroller of the Currency may require

1 the national bank, under such terms and conditions
2 as may be imposed by the Comptroller and subject
3 to such extension of time as may be granted in the
4 discretion of the Comptroller, to divest control of
5 any financial subsidiary.

6 “(5) CONSULTATION.—In taking any action
7 under this subsection, the Comptroller shall consult
8 with all relevant Federal and State regulatory agen-
9 cies and authorities.

10 “(f) FAILURE TO MAINTAIN PUBLIC RATING OR
11 MEET APPLICABLE CRITERIA.—

12 “(1) IN GENERAL.—A national bank that does
13 not continue to meet any applicable rating or other
14 requirement of subsection (a)(2)(E) after acquiring
15 or establishing a financial subsidiary shall not, di-
16 rectly or through a subsidiary, purchase or acquire
17 any additional equity capital of any financial sub-
18 sidiary until the bank meets such requirements.

19 “(2) EQUITY CAPITAL.—For purposes of this
20 subsection, the term ‘equity capital’ includes, in ad-
21 dition to any equity instrument, any debt instrument
22 issued by a financial subsidiary, if the instrument
23 qualifies as capital of the subsidiary under any Fed-
24 eral or State law, regulation, or interpretation appli-
25 cable to the subsidiary.

1 “(g) DEFINITIONS.—For purposes of this section, the
2 following definitions shall apply:

3 “(1) AFFILIATE, COMPANY, CONTROL, AND
4 SUBSIDIARY.—The terms ‘affiliate’, ‘company’, ‘con-
5 trol’, and ‘subsidiary’ have the meanings given those
6 terms in section 2 of the Bank Holding Company
7 Act of 1956.

8 “(2) APPROPRIATE FEDERAL BANKING AGENCY,
9 DEPOSITORY INSTITUTION, INSURED BANK, AND IN-
10 SURED DEPOSITORY INSTITUTION.—The terms ‘ap-
11 propriate Federal banking agency’, ‘depository insti-
12 tution’, ‘insured bank’, and ‘insured depository insti-
13 tution’ have the meanings given those terms in sec-
14 tion 3 of the Federal Deposit Insurance Act.

15 “(3) FINANCIAL SUBSIDIARY.—The term ‘fi-
16 nancial subsidiary’ means any company that is con-
17 trolled by 1 or more insured depository institutions
18 other than a subsidiary that—

19 “(A) engages solely in activities that na-
20 tional banks are permitted to engage in directly
21 and are conducted subject to the same terms
22 and conditions that govern the conduct of such
23 activities by national banks; or

24 “(B) a national bank is specifically author-
25 ized by the express terms of a Federal statute

1 (other than this section), and not by implication
2 or interpretation, to control, such as by section
3 25 or 25A of the Federal Reserve Act or the
4 Bank Service Company Act.

5 “(4) ELIGIBLE DEBT.—The term ‘eligible debt’
6 means unsecured long-term debt that—

7 “(A) is not supported by any form of cred-
8 it enhancement, including a guarantee or stand-
9 by letter of credit; and

10 “(B) is not held in whole or in any signifi-
11 cant part by any affiliate, officer, director, prin-
12 cipal shareholder, or employee of the bank or
13 any other person acting on behalf of or with
14 funds from the bank or an affiliate of the bank.

15 “(5) WELL CAPITALIZED.—The term ‘well cap-
16 italized’ has the meaning given the term in section
17 38 of the Federal Deposit Insurance Act.

18 “(6) WELL MANAGED.—The term ‘well man-
19 aged’ means—

20 “(A) in the case of a depository institution
21 that has been examined, unless otherwise deter-
22 mined in writing by the appropriate Federal
23 banking agency—

24 “(i) the achievement of a composite
25 rating of 1 or 2 under the Uniform Finan-

1 cial Institutions Rating System (or an
2 equivalent rating under an equivalent rat-
3 ing system) in connection with the most re-
4 cent examination or subsequent review of
5 the depository institution; and

6 “(ii) at least a rating of 2 for man-
7 agement, if such rating is given; or

8 “(B) in the case of any depository institu-
9 tion that has not been examined, the existence
10 and use of managerial resources that the appro-
11 priate Federal banking agency determines are
12 satisfactory.”.

13 (b) SECTIONS 23A AND 23B OF THE FEDERAL RE-
14 SERVE ACT.—

15 (1) LIMITING THE EXPOSURE OF A BANK TO A
16 FINANCIAL SUBSIDIARY TO THE AMOUNT OF PER-
17 MISSIBLE EXPOSURE TO AN AFFILIATE.—Section
18 23A of the Federal Reserve Act (12 U.S.C. 371c) is
19 amended—

20 (A) by redesignating subsection (e) as sub-
21 section (f); and

22 (B) by inserting after subsection (d), the
23 following new subsection:

24 “(e) RULES RELATING TO BANKS WITH FINANCIAL
25 SUBSIDIARIES.—

1 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
2 purposes of this section and section 23B, the term
3 ‘financial subsidiary’ means any company that is a
4 subsidiary of a bank that would be a financial sub-
5 sidiary of a national bank under section 5136A of
6 the Revised Statutes of the United States.

7 “(2) FINANCIAL SUBSIDIARY TREATED AS AN
8 AFFILIATE.—For purposes of applying this section
9 and section 23B, and notwithstanding subsection
10 (b)(2) of this section or section 23B(d)(1), a finan-
11 cial subsidiary of a bank—

12 “(A) shall be deemed to be an affiliate of
13 the bank; and

14 “(B) shall not be deemed to be a sub-
15 sidiary of the bank.

16 “(3) EXCEPTIONS FOR TRANSACTIONS WITH FI-
17 NANCIAL SUBSIDIARIES.—

18 “(A) EXCEPTION FROM LIMIT ON COV-
19 ERED TRANSACTIONS WITH ANY INDIVIDUAL FI-
20 NANCIAL SUBSIDIARY.—Notwithstanding para-
21 graph (2), the restriction contained in sub-
22 section (a)(1)(A) shall not apply with respect to
23 covered transactions between a bank and any
24 individual financial subsidiary of the bank.

1 “(B) EXCEPTION FOR EARNINGS RE-
2 TAINED BY FINANCIAL SUBSIDIARIES.—Not-
3 withstanding paragraph (2) or subsection
4 (b)(7), a bank’s investment in a financial sub-
5 sidiary of the bank shall not include retained
6 earnings of the financial subsidiary.

7 “(4) ANTI-EVASION PROVISION.—For purposes
8 of this section and section 23B—

9 “(A) any purchase of, or investment in, the
10 securities of a financial subsidiary of a bank by
11 an affiliate of the bank shall be considered to
12 be a purchase of or investment in such securi-
13 ties by the bank; and

14 “(B) any extension of credit by an affiliate
15 of a bank to a financial subsidiary of the bank
16 shall be considered to be an extension of credit
17 by the bank to the financial subsidiary if the
18 Board determines that such treatment is nec-
19 essary or appropriate to prevent evasions of this
20 Act and the Gramm-Leach-Bliley Act.”.

21 (2) REBUTTABLE PRESUMPTION OF CONTROL
22 OF PORTFOLIO COMPANY.—Section 23A(b) of the
23 Federal Reserve Act (12 U.S.C. 371c(b)) is amended
24 by adding at the end the following new paragraph—

1 “(11) REBUTTABLE PRESUMPTION OF CON-
2 TROL OF PORTFOLIO COMPANIES.—In addition to
3 paragraph (3), a company or shareholder shall be
4 presumed to control any other company if the com-
5 pany or shareholder, directly or indirectly, or acting
6 through 1 or more other persons, owns or controls
7 15 percent or more of the equity capital of the other
8 company pursuant to subparagraph (H) or (I) of
9 section 4(k)(4) of the Bank Holding Company Act
10 of 1956 or rules adopted under section 122 of the
11 Gramm-Leach-Bliley Act, if any, unless the company
12 or shareholder provides information acceptable to
13 the Board to rebut this presumption of control.”.

14 (3) RULEMAKING REQUIRED CONCERNING DE-
15 RIVATIVE TRANSACTIONS AND INTRADAY CREDIT.—
16 Section 23A(f) of the Federal Reserve Act (12
17 U.S.C. 371c(f)) (as so redesignated by paragraph
18 (1)(A) of this subsection) is amended by inserting at
19 the end the following new paragraph:

20 “(3) RULEMAKING REQUIRED CONCERNING DE-
21 RIVATIVE TRANSACTIONS AND INTRADAY CREDIT.—

22 “(A) IN GENERAL.—Not later than 18
23 months after the date of the enactment of the
24 Gramm-Leach-Bliley Act, the Board shall adopt
25 final rules under this section to address as cov-

1 ered transactions credit exposure arising out of
2 derivative transactions between member banks
3 and their affiliates and intraday extensions of
4 credit by member banks to their affiliates.

5 “(B) EFFECTIVE DATE.—The effective
6 date of any final rule adopted by the Board
7 pursuant to subparagraph (A) shall be delayed
8 for such period as the Board deems necessary
9 or appropriate to permit banks to conform their
10 activities to the requirements of the final rule
11 without undue hardship.”.

12 (c) ANTITYING.—Section 106(a) of the Bank Holding
13 Company Act Amendments of 1970 (12 U.S.C. 1971) is
14 amended by adding at the end the following: “For pur-
15 poses of this section, a financial subsidiary of a national
16 bank engaging in activities pursuant to section 5136A(a)
17 of the Revised Statutes of the United States shall be
18 deemed to be a subsidiary of a bank holding company, and
19 not a subsidiary of a bank.”.

20 (d) SAFETY AND SOUNDNESS FIREWALLS FOR
21 STATE BANKS WITH FINANCIAL SUBSIDIARIES.—

22 (1) FEDERAL DEPOSIT INSURANCE ACT.—The
23 Federal Deposit Insurance Act (12 U.S.C. 1811 et
24 seq.) is amended by inserting after section 45 (as

1 added by section 112(b) of this title) the following
2 new section:

3 **“SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**
4 **BLE TO FINANCIAL SUBSIDIARIES OF BANKS.**

5 “(a) IN GENERAL.—An insured State bank may con-
6 trol or hold an interest in a subsidiary that engages in
7 activities as principal that would only be permissible for
8 a national bank to conduct through a financial subsidiary
9 if—

10 “(1) the State bank and each insured deposi-
11 tory institution affiliate of the State bank are well
12 capitalized (after the capital deduction required by
13 paragraph (2));

14 “(2) the State bank complies with the capital
15 deduction and financial statement disclosure require-
16 ments in section 5136A(c) of the Revised Statutes
17 of the United States;

18 “(3) the State bank complies with the financial
19 and operational safeguards required by section
20 5136A(d) of the Revised Statutes of the United
21 States; and

22 “(4) the State bank complies with the amend-
23 ments to sections 23A and 23B of the Federal Re-
24 serve Act made by section 121(b) of the Gramm-
25 Leach-Bliley Act.

1 “(b) PRESERVATION OF EXISTING SUBSIDIARIES.—
2 Notwithstanding subsection (a), an insured State bank
3 may retain control of a subsidiary, or retain an interest
4 in a subsidiary, that the State bank lawfully controlled or
5 acquired before the date of the enactment of the Gramm-
6 Leach-Bliley Act, and conduct through such subsidiary
7 any activities lawfully conducted in such subsidiary as of
8 such date.

9 “(c) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 “(1) SUBSIDIARY.—The term ‘subsidiary’
12 means any company that is a subsidiary (as defined
13 in section 3(w)(4)) of 1 or more insured banks.

14 “(2) FINANCIAL SUBSIDIARY.—The term ‘fi-
15 nancial subsidiary’ has the meaning given the term
16 in section 5136A(g) of the Revised Statutes of the
17 United States.

18 “(d) PRESERVATION OF AUTHORITY.—

19 “(1) FEDERAL DEPOSIT INSURANCE ACT.—No
20 provision of this section shall be construed as super-
21 seding the authority of the Federal Deposit Insur-
22 ance Corporation to review subsidiary activities
23 under section 24.

24 “(2) FEDERAL RESERVE ACT.—No provision of
25 this section shall be construed as affecting the appli-

1 cability of the 20th undesignated paragraph of sec-
2 tion 9 of the Federal Reserve Act.”.

3 (2) FEDERAL RESERVE ACT.—The 20th undes-
4 ignated paragraph of section 9 of the Federal Re-
5 serve Act (12 U.S.C. 335) is amended by adding at
6 the end the following: “This paragraph shall not
7 apply to any interest held by a State member bank
8 in accordance with section 5136A of the Revised
9 Statutes of the United States and subject to the
10 same conditions and limitations provided in such
11 section.”.

12 (e) CLERICAL AMENDMENT.—The table of sections
13 for chapter one of title LXII of the Revised Statutes of
14 the United States is amended—

15 (1) by redesignating the item relating to section
16 5136A as section 5136B; and

17 (2) by inserting after the item relating to sec-
18 tion 5136 the following new item:

“5136A. Financial subsidiaries of national banks.”.

19 **SEC. 122. CONSIDERATION OF MERCHANT BANKING AC-**
20 **TIVITIES BY FINANCIAL SUBSIDIARIES.**

21 After the end of the 5-year period beginning on the
22 date of the enactment of the Gramm-Leach-Bliley Act, the
23 Board of Governors of the Federal Reserve System and
24 the Secretary of the Treasury may, if appropriate, after
25 considering—

1 (1) the experience with the effects of financial
2 modernization under this Act and merchant banking
3 activities of financial holding companies;

4 (2) the potential effects on depository institu-
5 tions and the financial system of allowing merchant
6 banking activities in financial subsidiaries; and

7 (3) other relevant facts;

8 jointly adopt rules that permit financial subsidiaries to en-
9 gage in merchant banking activities described in section
10 4(k)(4)(H) of the Bank Holding Company Act of 1956,
11 under such terms and conditions as the Board of Gov-
12 ernors of the Federal Reserve System and the Secretary
13 of the Treasury jointly determine to be appropriate.

14 **Subtitle D—Preservation of FTC**
15 **Authority**

16 **SEC. 131. AMENDMENT TO THE BANK HOLDING COMPANY**
17 **ACT OF 1956 TO MODIFY NOTIFICATION AND**
18 **POST-APPROVAL WAITING PERIOD FOR SEC-**
19 **TION 3 TRANSACTIONS.**

20 Section 11(b)(1) of the Bank Holding Company Act
21 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting
22 “and, if the transaction also involves an acquisition under
23 section 4, the Board shall also notify the Federal Trade
24 Commission of such approval” before the period at the end
25 of the first sentence.

1 **SEC. 132. INTERAGENCY DATA SHARING.**

2 (a) IN GENERAL.—To the extent not prohibited by
3 other law, the Comptroller of the Currency, the Director
4 of the Office of Thrift Supervision, the Federal Deposit
5 Insurance Corporation, and the Board of Governors of the
6 Federal Reserve System shall make available to the Attor-
7 ney General and the Federal Trade Commission any data
8 in the possession of any such banking agency that the
9 antitrust agency deems necessary for antitrust review of
10 any transaction requiring notice to any such antitrust
11 agency or the approval of such agency under section 3 or
12 4 of the Bank Holding Company Act of 1956, section
13 18(c) of the Federal Deposit Insurance Act, the National
14 Bank Consolidation and Merger Act, section 10 of the
15 Home Owners' Loan Act, or the antitrust laws.

16 (b) CONFIDENTIALITY REQUIREMENTS.—

17 (1) IN GENERAL.—Any information or material
18 obtained by any agency pursuant to subsection (a)
19 shall be treated as confidential.

20 (2) PROCEDURES FOR DISCLOSURE.—If any in-
21 formation or material obtained by any agency pursu-
22 ant to subsection (a) is proposed to be disclosed to
23 a third party, written notice of such disclosure shall
24 first be provided to the agency from which such in-
25 formation or material was obtained and an oppor-

1 tunity shall be given to such agency to oppose or
2 limit the proposed disclosure.

3 (3) OTHER PRIVILEGES NOT WAIVED BY DIS-
4 CLOSURE UNDER THIS SECTION.—The provision by
5 any Federal agency of any information or material
6 pursuant to subsection (a) to another agency shall
7 not constitute a waiver, or otherwise affect, any
8 privilege any agency or person may claim with re-
9 spect to such information under Federal or State
10 law.

11 (4) EXCEPTION.—No provision of this section
12 shall be construed as preventing or limiting access to
13 any information by any duly authorized committee
14 of the Congress or the Comptroller General of the
15 United States.

16 (c) BANKING AGENCY INFORMATION SHARING.—The
17 provisions of subsection (b) shall apply to—

18 (1) any information or material obtained by any
19 Federal banking agency (as defined in section 3(z)
20 of the Federal Deposit Insurance Act) from any
21 other Federal banking agency; and

22 (2) any report of examination or other confiden-
23 tial supervisory information obtained by any State
24 agency or authority, or any other person, from a
25 Federal banking agency.

1 **SEC. 133. CLARIFICATION OF STATUS OF SUBSIDIARIES**
2 **AND AFFILIATES.**

3 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-
4 SION JURISDICTION.—Any person that directly or indi-
5 rectly controls, is controlled directly or indirectly by, or
6 is directly or indirectly under common control with, any
7 bank or savings association (as such terms are defined in
8 section 3 of the Federal Deposit Insurance Act) and is
9 not itself a bank or savings association shall not be
10 deemed to be a bank or savings association for purposes
11 of any provisions applied by the Federal Trade Commis-
12 sion under the Federal Trade Commission Act.

13 (b) SAVINGS PROVISION.—No provision of this sec-
14 tion shall be construed as restricting the authority of any
15 Federal banking agency (as defined in section 3 of the
16 Federal Deposit Insurance Act) under any Federal bank-
17 ing law, including section 8 of the Federal Deposit Insur-
18 ance Act.

19 (c) HART-SCOTT-RODINO AMENDMENTS.—

20 (1) BANKS.—Section 7A(c)(7) of the Clayton
21 Act (15 U.S.C. 18a(c)(7)) is amended by inserting
22 before the semicolon at the end the following: “, ex-
23 cept that a portion of a transaction is not exempt
24 under this paragraph if such portion of the trans-
25 action (A) is subject to section 4(k) of the Bank
26 Holding Company Act of 1956; and (B) does not re-

1 quire agency approval under section 3 of the Bank
2 Holding Company Act of 1956”.

3 (2) BANK HOLDING COMPANIES.—Section
4 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is
5 amended by inserting before the semicolon at the
6 end the following: “, except that a portion of a
7 transaction is not exempt under this paragraph if
8 such portion of the transaction (A) is subject to sec-
9 tion 4(k) of the Bank Holding Company Act of
10 1956; and (B) does not require agency approval
11 under section 4 of the Bank Holding Company Act
12 of 1956”.

13 **Subtitle E—National Treatment**

14 **SEC. 141. FOREIGN BANKS THAT ARE FINANCIAL HOLDING** 15 **COMPANIES.**

16 Section 8(c) of the International Banking Act of
17 1978 (12 U.S.C. 3106(c)) is amended by adding at the
18 end the following new paragraph:

19 “(3) TERMINATION OF GRANDFATHERED
20 RIGHTS.—

21 “(A) IN GENERAL.—If any foreign bank or
22 foreign company files a declaration under sec-
23 tion 4(l)(1)(C) of the Bank Holding Company
24 Act of 1956, any authority conferred by this
25 subsection on any foreign bank or company to

1 engage in any activity that the Board has deter-
2 mined to be permissible for financial holding
3 companies under section 4(k) of such Act shall
4 terminate immediately.

5 “(B) RESTRICTIONS AND REQUIREMENTS
6 AUTHORIZED.—If a foreign bank or company
7 that engages, directly or through an affiliate
8 pursuant to paragraph (1), in an activity that
9 the Board has determined to be permissible for
10 financial holding companies under section 4(k)
11 of the Bank Holding Company Act of 1956 has
12 not filed a declaration with the Board of its sta-
13 tus as a financial holding company under such
14 section by the end of the 2-year period begin-
15 ning on the date of the enactment of the
16 Gramm-Leach-Bliley Act, the Board, giving due
17 regard to the principle of national treatment
18 and equality of competitive opportunity, may
19 impose such restrictions and requirements on
20 the conduct of such activities by such foreign
21 bank or company as are comparable to those
22 imposed on a financial holding company orga-
23 nized under the laws of the United States, in-
24 cluding a requirement to conduct such activities
25 in compliance with any prudential safeguards

1 established under section 114 of the Gramm-
2 Leach-Bliley Act.”.

3 **SEC. 142. REPRESENTATIVE OFFICES.**

4 (a) DEFINITION.—Section 1(b)(15) of the Inter-
5 national Banking Act of 1978 (12 U.S.C. 3101(15)) is
6 amended by striking “State agency, or subsidiary of a for-
7 eign bank” and inserting “or State agency”.

8 (b) EXAMINATIONS.—Section 10(c) of the Inter-
9 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
10 amended by adding at the end the following new sentence:
11 “The Board may also make examinations of any affiliate
12 of a foreign bank conducting business in any State if the
13 Board deems it necessary to determine and enforce com-
14 pliance with this Act, the Bank Holding Company Act of
15 1956, or other applicable Federal banking law.”.

16 **Subtitle F—Direct Activities of**
17 **Banks**

18 **SEC. 151. AUTHORITY OF NATIONAL BANKS TO UNDER-**
19 **WRITE CERTAIN MUNICIPAL BONDS.**

20 The paragraph designated the Seventh of section
21 5136 of the Revised Statutes of the United States (12
22 U.S.C. 24(7)) is amended by adding at the end the fol-
23 lowing new sentence: “In addition to the provisions in this
24 paragraph for dealing in, underwriting, or purchasing se-
25 curities, the limitations and restrictions contained in this

1 paragraph as to dealing in, underwriting, and purchasing
2 investment securities for the national bank's own account
3 shall not apply to obligations (including limited obligation
4 bonds, revenue bonds, and obligations that satisfy the re-
5 quirements of section 142(b)(1) of the Internal Revenue
6 Code of 1986) issued by or on behalf of any State or polit-
7 ical subdivision of a State, including any municipal cor-
8 porate instrumentality of 1 or more States, or any public
9 agency or authority of any State or political subdivision
10 of a State, if the national bank is well capitalized (as de-
11 fined in section 38 of the Federal Deposit Insurance
12 Act).”.

13 **Subtitle G—Effective Date**

14 **SEC. 161. EFFECTIVE DATE.**

15 This title (other than section 104) and the amend-
16 ments made by this title shall take effect 120 days after
17 the date of the enactment of this Act.